

of s. 34 is not as regards this case affected by s. 50, the admission in evidence of the document by the Court of first instance could not be questioned or interfered with by the Court of Appeal.

We think, therefore, that the Subordinate Judge was wrong in excluding the *roka* from his consideration on the ground that it was not admissible in evidence. We must, therefore, set aside his decree, and remand the case in order that the Subordinate Judge may consider the effect of the *roka* as evidence, and decide the appeal accordingly. Costs will abide the result.

*Appeal allowed and case remanded.*

*Before Mr. Justice Wilson and Mr. Justice Beverley.*

MAHOMED ZAMIR (PLAINTIFF) v. ABDUL HAKIM AND ANOTHER  
(DEFENDANTS)\*

1885,  
June 30.

*Sale for arrears of rent—Bengal Regulation (VIII of 1819), s. 8—Notice of Sale—Publication of Proof of Service.—Suit to set aside sale.*

Compliance with the directions in Regulation VIII of 1819 as to service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his *kachari*: *Held* that this was not sufficient, and that the sale must be set aside.

*Maharajah of Burdwan v. Tarasundari Debi* (1) and *Maharajah of Burdwan v. Kristo Kamini Dasi* (2) followed.

THIS was a suit to set aside a sale under Regulation VIII of 1819. The plaintiffs were talukdars of a plot of land in the zemindari of defendant No. 2. Defendant No. 1 was the auction-purchaser at the sale sought to be set aside. Plaintiffs objected to the sale on the ground, among others, that notice thereof had not been given in accordance with s. 8 of the Regulation. That section provides that notice shall be posted at the *kachari* of the defaulter whose land is to be sold. The Munsiff of North Putia, who tried the case, found that the evidence adduced by

\*Appeal from Appellate Decree No. 1827 of 1884, against the decree of Baboo Kanie Lall Mukherji, First Subordinate Judge of Chittagong, dated the 17th of April 1884, reversing the decree of Baboo Hara Kumar Rai, Munsiff of Utterpotia, dated the 6th of October 1882.

(1) L. R., 10 I. A., 19; I. L. R., 9 Calc., 619.

(2) I. L. R., 9 Calc., 931.

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defendants to prove service of notice was quite insufficient, and ordered the sale to be set aside. On appeal the Subordinate Judge of Chittagong found that there was evidence of service upon the defaulter sufficient to satisfy the requirements of the section. He also held that, in order to set aside the sale, it was necessary to show fraud on the part of the auction-purchaser in collusion with the zemindar; and on those grounds, as well as on the ground that the plaintiffs had suffered no material loss by the irregularity, he reversed the decree of the lower Court.

Against this decree plaintiff appealed to the High Court.

Moulvie *Serajul Islam* for the appellant.

Baboo *Akhil Chunder Sen* for the respondents.

The Court (WILSON and BEVERLEY, JJ.) delivered the following judgment:—

This was a suit to set aside a sale under Regulation VIII of 1819, the plaintiff being the proprietor of the tenure sold, and the principal defendant the purchaser at the sale.

The first issue raised was, "whether the sale notification was duly published as required by Regulation VIII of 1819."

Regulation VIII of 1819 lays down a certain procedure with regard to the service of notice: *First*, that a notice is to be stuck up at the Collector's *kachari*; *secondly*, that a similar notice is to be stuck up at the *sudder kachari* of the zemindar; and, *thirdly*, that a copy or extract of so much of the notice as affects a particular defaulter, is to be similarly published at the *kachari* of the defaulter, or at the principal town or village upon the land of the defaulter.

The Regulation further provides with regard to the service at the *kachari* of the defaulter, that the evidence of that fact must be preserved in the way prescribed. In the case of *The Maharajah of Burdwan v. Tarasundari Debi* (1) the Privy Council have held that compliance with the directions in the Regulation is absolutely essential to give validity to the sale. They held, therefore, in that particular case that where the service was disputed, compliance with the provisions as to the mode

(1) L. R., 10 I. A., 19; I. L. R., 9 Cal., 619.

of proof was absolutely necessary. In the same way, in a Full Bench case in this Court, the *Maharajah of Burdwan v. Kristo Kamini Dasi* (1), it was held that the service at the *kachari* of the defaulter is essential, and that service upon the defaulter himself is not sufficient.

In the present case there is no evidence of service at the *kachari* of the defaulter: there is evidence of service upon the defaulter, but that will not do. There is no evidence, on which any Court could act, of any service by sticking up at the Collector's *kachari*; and there is no evidence at all of any compliance with the terms of the Regulation as to the preservation of the evidence of service at the sudder *kachari* of the defaulter.

On these grounds we think that the decree of the lower Appellate Court cannot be sustained. That decree will be set aside, and the decree of the Munsiff will be affirmed with costs in all Courts.

*Appeal decreed.*

*Before Mr. Justice Field and Mr. Justice O'Keenly.*

RAGHUBAR DYAL SAHU AND OTHERS (DEFENDANTS No. 1) v. BHIKYA LAL MISSER (PLAINTIFF) AND ANOTHER (DEFENDANT No. 2).\*

1885  
August 12.

*Guardian—Minor—Decree against infant, Sale under—Suit to set sale aside on attaining majority—Limitation—Act (XV of 1877), Arts. 44, 144—Procedure.*

Where a decree has been made against an infant duly represented by his guardian, and the infant on attaining his majority seeks to set that decree aside by a separate suit, he can succeed only on proof of fraud or collusion on the part of his guardian.

If the infant desire to have the decree set aside, because any available good ground of defence was not put forward at the hearing by his guardian, he should apply for a review. If the decree were an *ex-parte* one, the procedure adopted should be that given in the Civil Procedure Code for setting aside *ex-parte* decrees.

Where a certain period is allowed by the Law of Limitation, within which an instrument affecting a person's rights or immovable property must be impugned, and the person whose rights or property are affected fails to impugn

\* Appeal from Original Decree No. 176 of 1884, against the decree of A. C. Brett, Esq., Judge of Tirhoot, dated the 13th of March 1884.

(1) I. B. R., 9 Calc., 931.