PRIVY COUNCIL.

THE MAHARANI OF BURDWAN *v.* KRISHNA KAMINI DASI AND OTHERS.

P. C.*
1886
December
16 *and* 17.
1887
February 5.

[On appeal from the High Court at Fort William in Bengal.]

Sale for arrears of rent—Construction of Regulation VIII of 1819, *s.* 8, *para.* 2—*Publication of copy or extract of such part of the notice of sale as may apply to the tenure of the defaulter.*

Publication of the notice of sale of a tenure under Regulation VIII of 1819 is required to be in the manner prescribed in s. 8, clause 2; and personal service on the defaulter is not sufficient. The objects of directing local publication of the notice, *viz.*, to warn the under-lessees of the sale proceedings and also to advertise the sale to those who might bid, would be frustrated if it were sufficient to publish the notice at a distant katcheri or to serve it personally.

If there is a katcheri on the land of the defaulting putnidar, meaning the land which is to be sold for arrear of rent, the copy or extract of such part of the notice of sale as may apply to the tenure in question must be published at that katcheri, and if there is no such katcheri on the land held by the defaulter, the copy or extract must be published at the principal town or village on the land.

In the description of this in clause 2, as "the notice required to be sent into the mofussil," the word "mofussil" is opposed to the sadar katcheri of the zemindar, and refers to the subordinate estate, which is the subject of the sale proceedings.

Where a zemindar, selling the tenure of a defaulting putnidar under the Regulation, had caused to be stuck up the requisite petition and notice at the Collector's katcheri, and the notice at the zemindar's katcheri, but not the copy or extract which is directed by the Regulation to be similarly published at the katcheri, nor had published it at any other place upon the land of the defaulter: *Held* that the zemindar had not observed a substantial part of the prescribed process, and that this was for the defaulting putnidar "a sufficient plea" within the meaning of the Regulation.

APPEAL from a decree (6th April, 1883) of the High Court affirming a decree (31st December, 1881) of the Subordinate Judge of Hooghly.

The present question was whether there had been before the sale of the respondent's putni taluk for arrears of rent due to the zemindar, represented by the appellant, a sufficient publication

* *Present:* LORD HOBHOUSE, SIR B. PEACOCK and SIR R. COUCH.

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to satisfy the requirements of Regulation VIII of 1819, s. 8, clause 2 (1), of the notice of the intended sale, and whether the High Court had rightly decreed that the sale should be set aside on the ground that the publication of the notice had not been duly effected.

The tenure sold under the Regulation was mehal Amerpore in the Hooghly zillah, within the zemindari of his late Highness Aftabchand Mahatab Bahadur, Maharaja of Burdwan, who, in his lifetime, had made a putni settlement of that mehal with Ishwarchandra Kur, now deceased, late husband of Krishna Kamini Dasi, the plaintiff in the suit, and with Srinarain Kur, also deceased, and now represented by his son Radhabullub Kur.

The sale, which was for default in payment of rent for the half-year ending 1287 B.S. (the end corresponding to 11th April, 1881), the arrears amounting to Rs. 6,475-14-11, took

(1) The second clause of s. 8 of Regulation VIII of 1819, relating to the mode in which zemindars are to be allowed to bring to sale tenures in which the right to sell for arrears is reserved by stipulation, enacts the following:—

On the first day of Baisakh, that is, at the commencement of the following year from that of which the rent is due, the zemindar shall present a petition to the Collector containing a specification of any balances that may be due to him on account of the expired year from all or any talukdars or other holders of an interest of the nature described in the preceding clause of this section. The same shall then be stuck up in some conspicuous part of the katcheri with a notice that, if the amount claimed be not paid before the 1st of Jeth following, the tenures of the defaulters will on that day be sold by public sale in liquidation. Should, however, the 1st of Jeth fall on a Sunday, or a holiday, the next subsequent day not a holiday shall be selected instead. A similar notice shall be stuck up at the sadar katcheri of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case, shall be by him sent to be similarly published at the katcheri, or at the principal town or village, upon the land of the defaulter. The zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mofussil shall be served by a single peon, who shall bring back the receipt of the defaulter, or his manager for the same, or in the event of inability to procure this the signatures of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot.

place on the 1st Jeth 1288 (13th May, 1881); and the putni was bought by Bijoi Krishna Mukerji, the highest bidder for Rs. 35,500.

The present suit was instituted on the 21st May, 1881, by the respondent Krishna Kamini Dasi against the zemindar, joining with him as defendants the purchaser and Radhabullub Kur, her co-sharer in the putni. It was to have the sale set aside as having taken place "without publication of the notice at the katcheri of mehal Amerpore or in some principal village of the said lot." And whether there had been a sufficient compliance with the Regulation was the principal question raised by the issues.

From the evidence it appeared that, as the defaulting putnidars of mehal Amerpore had other properties in the neighbourhood, they had a more frequently used katcheri, called "dihi katcheri," at Mahanad, distant eight or nine miles from the confines of Amerpore. Two dar-putnidars, who were tenants of the largest sub-tenures that were in Amerpore, were always in the habit of paying rent at the "dihi katcheri" at Mahanad, while the katcheri within the Amerpore limits was only used for the purpose of receiving the rents of the smaller tenants, which, when received, were paid into the "dihi katcheri" at Mahanad.

The petition of the zemindar was duly "stuck up" in the Collector's katcheri, and a similar notice at the zemindar's own sadar katcheri. But no notice was taken to the mehal Amerpore, nor was any published on it. Instead of being taken there it was taken to the dihi katcheri at Mahanad, and at the latter it was personally received by Radhabullub Kur, one of the joint putnidars, and he directed Jodonath Bose, their joint servant, to sign the receipt for it, addressed to the Maharaja, the zemindar, as follows:—

Receipt of notice.

"Lot Amerpore in zillah Hooghly included in zemindari pergunnah Burdwan, &c., talukdar Srinarain Kur.

"The arrears of rent of this lot for the second half of the year 1287 B. S., with road cess and public works cess not having been paid, application has been made before the Collector of zillah Hooghly for realisation of Rs. 6,475-14-11 pie, under the provisions

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of Regulation VIII of 1819, according to the directions contained in Act V of 1853 and the letter No. 57 of the Honorable the Board of Revenue, dated the 31st January, 1874, and Act IX of 1880 of the Bengal Council, and the 1st of Jeth next has been fixed as the day before which the said arrears must be paid. Now the notice in the name of the talukdar of that lot having been legally served, has reached me in this mofussil place through the peon of your zemindari katcheri, in consequence of which I execute this receipt, having received this notice. The 11th Bysack 1288 B. S."

The Subordinate Judge was of opinion that, as there was a mal katcheri of the defaulter's upon the mehal which was in arrear, and as Mahanad was not in lot Amerpore, nor a principal town or village on the land of the defaulter, therefore the receipt of notice by the latter at Mahanad was not sufficient to satisfy the requirements of the Regulation. The suit was therefore decreed and the sale ordered to be set aside.

The appeal to the High Court came before a Divisional Bench (GARTH, C.J., and MACPHERSON, J.), and the question whether the notice had been sufficiently published was referred to a Full Bench: the referring order and the judgment of the Full Bench, which consisted of GARTH, C.J., MITTER, J., MCDONELL, J., PRINSEP, J., and TOTTENHAM, J., appear in the report of the hearing before the Full Bench (1). In accordance with the opinions of the Full Bench that the requirements of the Regulation had not been satisfied, and that the sale could not be maintained, the appeal was dismissed.

On this appeal,—

Sir *H. Davey, Q.C.*, and Mr. *T. H. Cowie, Q.C.* (Mr. *R. V. Doyne* and Mr. *C. W. Arathoon* with them), appeared for the appellant.

The respondents did not appear.

For the appellant it was argued that there had been a substantial compliance with the requirements of the Regulation. The notice was served personally on one of the defaulting putnidars, who was manager for both, and the servant of both had signed the receipt. Regard must be had to the position of the

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

party complainant. This was not any dar-putnidar or sub-tenure holder suffering indirectly from the insufficiency, if any, in the notice; but was one of the putnidars who had been effectively served with notice personally. It was submitted that this prevented the plaintiff from taking advantage of the failure to publish at the katcheri at Amerpore, which practically was less useful for the purposes of notice than Mahanad. The purposes of s. 8 had been answered by a mode of service, if not prescribed, quite effectual, and it could hardly be said that personal service of the notice was not, as far as the putnidar was concerned, effectual merely because another mode of publication was provided.

[LORD HOBHOUSE asked if the requirement could be satisfied without publication on the land. It was not a question of the sufficiency of proof but of the sufficiency of the thing proved.] It was argued that the publication was sufficient as it had been made. Reference was made to *Lootfonissa* v. *Kowar Ram Chunder* (1); *Sona Beebee* v. *Lall Chand Chowdhry* (2; *Baikantnauth Singh* v. *Maharaja Dhiraj Mahatab Chand* (3); *Mungazee Chuprassee* v. *Shibo* (4); *Gouree Lall* v. *Joodhisteer Hajrah* (5); *Ram Sabuk Bose* v. *Kaminee Koomaree Dossee* (6); *Maharaja of Burdwan* v. *Tarasoondari Debia* (7).

On a subsequent day, 5th February, 1887, their Lordships' judgment was delivered by

LORD HOBHOUSE.—The only questions on which it is necessary for their Lordships to express any opinion in this case are, first, what is the true construction of the Regulation VIII of 1819, s. 8, para. 2; and, secondly, whether the Maharaja of Burdwan, who is the selling zemindar, has done what is necessary for a sale under that Regulation.

The material facts are not in dispute. The requisite petition and notice were stuck up at the Collector's katcheri and the

(1) S. D. A., 1849, p. 371.
(2) 9 W. R., 242.
(3) 9 B. L. R., 87; 17 W. R., 447.
(4) 21 W. R., 369.
(5) I. L. R., 1 Calc., 359; 25 W. R., 141.
(6) L. R., 2 I. A., 71; 14 B. L. R., 394.
(7) L. R., 10 I. A., 19; I. L. R., 9 Calc., 619.

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requisite notice at the zemindar's katcheri. The copy or extract which is next directed by the Regulation to be similarly published was not stuck up at the plaintiff's katcheri at Amerpore or anywhere else in Amerpore, which is the putni taluk in question. Service of that notice was effected on Radhabullub, the plaintiff's nephew and co-sharer in the taluk, at her katcheri in Mahanad, about nine miles from Amerpore. The plaintiff's Mahanad katcheri is in the same house with that of Radhabullub. It has been strongly urged at the Bar that this service must be taken to be service on the plaintiff herself; but their Lordships do not think it necessary to decide this matter, which, for the purposes of the judgment, they will assume in favor of the zemindar. Would such a service relieve him from giving notice on the lands at Amerpore.

The directions of the Regulation are, that a copy or extract of the notice which is stuck up at the zemindar's katcheri "shall be by him sent to be similarly published at the katcheri or at the principal town or village on the land of the defaulter." It is argued that these terms do not require publication on the land of the defaulter, but that they are satisfied by publication at his katcheri, wherever it may be. And it must be allowed that the grammar of that sentence, taken alone, admits of such a construction.

The High Court have decided four points: first, that, if there is a katcheri on the land of the defaulting putnidar, the notice must be published there; secondly, that by the land of the defaulter is meant that land which the zemindar is seeking to sell for default of rent; thirdly, that if there is no such katcheri, the notice must be published at the principal town or village on the land in question; and, fourthly, that it must be published in the manner required, and that service on the putnidar is not sufficient. In all four of these propositions their Lordships agree.

To hold otherwise might defeat some of the substantial objects of this Regulation. It appears from the preamble that one of the objects is to establish "such provisions as have appeared calculated to protect the under-lessee from any collusion of his superior with the zemindar, or other, for his ruin, as well

as to secure the just rights of the zemindar on the sale of any tenure." And immediately afterwards occurs the statement that it has been deemed indispensable to fix the process by which the said tenures are to be brought to sale. The object of directing local publication of notices is to warn the underlessees of the contemplated proceedings which may result in sweeping away their property, and also to act as advertisements to persons who may bid at the sale. Both these objects might, and in many cases would, be frustrated if it were sufficient to publish notice at any katcheri which the putnidar may happen to possess, however distant it may be, or to serve it personally on the putnidar.

Moreover the notice in question is described as "the notice required to be sent into the mofussil." The word mofussil is doubtless opposed to the sadar katcheri of the zemindar. It may be used to signify the subordinate estate which is the subject of the proceedings, and in their Lordships' opinion it does point to that estate.

Then it is suggested that this suit is brought by the putnidar, and that an objection founded on the interests of the underlessees is not available to her. But that suggestion proceeds on a misconception of the nature and force of the objection. Their Lordships have to construe the Regulation. They find a process prescribed by it, which its framers thought it indispensable to fix, for the observance of which they have declared the zemindar to be exclusively answerable, and which is calculated to protect all persons interested in the estate against injury by the working of a very swift and summary remedy given to the zemindar. The zemindar has neglected to observe a substantial portion of that process. There is therefore material irregularity in his procedure, and of that irregularity the putnidar is entitled to avail herself as a "sufficient plea" within the meaning of the Regulation. Of course there may be cases in which one, who might otherwise be entitled to avail himself of an irregularity, has so conducted himself as to have waived or forfeited his right. But no such case is suggested here.

It remains to look at some decided cases which were cited as authority against the foregoing conclusions.

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In the case of *Lootfonissa Begum* v. *Kowar Ram Chunder* (1) the prescribed formalities had not been observed by the zemindar, and the sale by him was set aside. But in the course of their judgment the Sadar Dewanny Adawlut expressed an opinion that the katcheri of the defaulter may be any katcheri in which the collections of the tenure are made. Their Lordships, however, observe that the learned Judges do not cite the words of the Regulation correctly. They appear to mix up the sentence which relates to the mode of publication with the next one which relates to the evidence of it, two very distinct things. Moreover they rely on the presence of the comma placed after the word katcheri. Even if the punctuation were of the importance ascribed to it, it so happens that as the sentence is pointed the word "katcheri" may be applied to the whole expression "upon the land of the defaulter" just as easily as to the last three words only. But their Lordships think that it is an error to rely on punctuation in construing Acts of the Legislature. They find that the reasons given do not support the conclusion, from which they feel no difficulty in dissenting.

In the case of *Mungazee Chuprassee* v. *Shibo* (2) a Division Bench of the High Court decided, with much hesitation, that the Regulation was satisfied by publication at a katcheri of the defaulter, which, though not on the land to be sold, was on adjacent land and was the office at which all the business of the estate to be sold was carried on. If that decision were right it would not govern this case, in which there has been no publication in the mofussil at all. Independently of that difference the decision appears to have been rested on the dictum of the Sadar Dewanny Adawlut in 1849, and on the reason given for that dictum. But for the reasons above given their Lordships prefer the conclusion that the katcheri meant is one on the land to be sold, and that if there is none, as was the fact in the case under consideration, the publication should be in the principal village on that land preferably to a katcheri on other land. If there should be no village at all an adjacent katcheri might be the proper place of publication, but no such case appears to have occurred.

(1) S. D. A., Rep. 1849, p. 371. (2) 21 W. R., 369.

The only case cited which is directly in favor of the contention in this case is that of *Gouree Lall* v. *Joodhisteer Hajrah* (1), where it was decided that the Regulation was satisfied by service of notice at the house of the defaulter. But the authority of that decision is undermined by its being rested mainly on the case of *Sona Beebee* v. *Lall Chund Chowdhry* (2), and the recognition of that case by this Committee in *Ram Sabuk Bose* v. *Monmohini Dossee* (3). The same case has been again recognised by this Committee in *Maharajah of Burdwan* v. *Tarasoondari Debia* (4), but it is no authority for the proposition for which it is cited. It has been above pointed out that the formalities which the zemindar has to observe, and the evidence by which that observance has to be proved, are two totally distinct things. All that Sir B. Peacock decided was that, if the observance of the requisite formality was distinctly proved, it was not necessary to have the mode of proof which the Regulation directs. In the case of *Maharajah of Burdwan* v. *Tarasoondari Debia* (4), this Committee found that the question whether the requisite formality had been observed depended on conflicting evidence, but that the statutory mode of proof had clearly not been followed, and they hold that the decision must go against the zemindar, whose business it was to follow the prescribed method. They did not differ from Sir Barnes Peacock, nor did they hold that the statutory proof was the only proof that could be given. Neither did Sir Barnes Peacock decide or intimate any opinion that one of the important formalities required as preliminary to a sale could be dispensed with. Mr. Justice Glover rests his decision wholly on that of Sir B. Peacock, and its recognition by this Committee. And their Lordships observe that Mr. Justice Romesh Chunder Mitter, who adds other reasoning, is a party to the judgment now appealed from, apparently without dissent.

The result is that their Lordships will humbly advise Her

(1) I. L. R., 1 Calc., 359 ; 25 W. R., 141.
(2) 9 W. R., 242.
(3) L. R., 2 I. A. 71, App. 77 ; 14 B. L. R., 394.
(4) L. R., 6 I. A. 19 ; I. L. R. 9 Calc. 619.

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Majesty that this appeal should be dismissed and the judgment of the High Court affirmed.

Appeal dismissed.

Solicitor for the appellant: Mr. *T. L. Wilson.*

C. B.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

1887 February 24.

SUPRAMANYAN SETTY *v.* HURRY FROO MUG.*

Practice—Costs—Attorney's lien—Lien—Attaching creditor—Fund in Court attached.

A sum of money had been paid into Court as admittedly due to the plaintiff in a certain suit; the plaintiff not having satisfied in full his attorney's taxed bill of costs, the attorney applied for payment out of the fund in Court. Previously to this application the fund had been attached by a third party. *Held* that the attorney was entitled to enforce his lien as against the attaching creditor for all costs incurred up to the date of attachment; that the attaching creditor was then entitled to be satisfied before the attorney could claim payment out of the balance in Court of any sum remaining due to him on account of his costs.

THIS was an application by Babu Nobin Chund Bural, attorney for the plaintiff in the above suit, on notice to the gomastah of the plaintiff, and to Messrs. Beeby and Rutter, attorneys for one Lubbah, for an order directing the payment out to him of a sum of Rs. 2,027-6 (being the balance due to him on account of taxed costs) from a sum of Rs. 2,291-10-6 standing to the credit of the above suit in the hands of the Accountant-General of the Court.

The taxed costs above referred to had been costs decreed in favor of the plaintiff in the above suit, which was one on an account stated, and in which the defendant had admitted a sum of Rs. 2,291-10-6 to be due to the plaintiff and had paid that amount into Court. The defendant in the above suit had made no payment on account of the sum decreed against him, and inasmuch as the plaintiff himself was living out of the jurisdiction in Madras, the plaintiff's attorney (having only received a

* Suit No. 393 of 1883.