

the Deputy Registrar of the High Court, will pay the costs of this appeal.

1892

*Appeal allowed.*

ZAKERI  
BEGUM  
v.  
SAKINA  
BEGUM.

Solicitor for the appellant : Mr. J. F. Watkins.

Solicitors for the respondents : Messrs. T. L. Wilson & Co.

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Pigot and Mr. Justice Macpherson.*

HJURRO DOYAL ROY CHOWDHRY (PLAINTIFF) v. MAHOMED  
GAZI CHOWDHRY AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1891  
*May 27.*

*Putni Taluq—Sale of Putni tenure for arrears of rent—Bengal Regulation VIII of 1819, s. 8, cl. 2—Onus of proof of publication of notice before sale of Putni taluq for arrears of rent—Notice of sale of Putni taluq, onus of proof of publication of—Suit to set aside sale.*

In a suit to set aside a sale of a putni taluq, held under the provisions of section 8 of Regulation VIII of 1819, on the ground that the notices required by sub-section 2 of that section had not been duly published, it lies upon the defendant to show that the sale was preceded by the notices required by that sub-section, the service of which notices is an essential preliminary to the validity of the sale.

In such a suit, where there was no evidence one way or the other to show that the notice required by that sub-section to be stuck up in some conspicuous part of the Collector's kutcheri, had been published, *held*, that the plaintiff was entitled to a decree setting aside the sale.

THIS was a suit brought by the plaintiff to have a sale of a putni taluk, held under the provisions of Regulation VIII of 1819, set aside on the ground of non-publication of the notices required by clause 2 of section 8 of the Regulation, the allegation being that such non-publication was due to fraud on the part of the defendants, the result being that property of the value of Rs. 400 had been sold for Rs. 60 only. The plaintiff alleged that defendant No. 1, Mahomed Gazi Chowdhry, was the proprietor of the zemindari, within which the putni taluq was situated, and of

\* Appeal from Appellate Decree No. 831 of 1890, against the decree of Baboo Nobin Chunder Gangooly, Subordinate Judge of Tipperah, dated the 7th April 1890, reversing the decree of Baboo Nongendro Chunder Mitter, Munsiff of Chandpore, dated the 8th of May 1889.

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which defendant No. 3, Neari Bibi, was the taluqdar, defendant No. 4, Mahomed Jama, being the husband of defendant No. 3; that in execution of a money decree against defendants Nos. 3 and 4, the taluq in suit was brought to sale and was purchased by one Koylash Chunder Basu in September 1887 for Rs. 400, who was a benamidar for the plaintiff, and who executed a *kpbala* of the taluq in his favour on the 27th Aughran 1294 B.S. (12th December 1887). The plaintiff further alleged that defendant No. 1, in collusion with defendants Nos. 3 and 4, on the 14th May 1888 brought the putni to sale for arrears of rent for the year 1294, he being the recognized owner; that the sale was held under the provisions of Regulation VIII of 1819, and was a collusive and fraudulent transaction arranged between the defendants, the purchaser being defendant No. 2, who was a near relative and benamidar for defendants Nos. 3 and 4; that the price paid by defendant No. 2 was Rs. 60 only, the property being worth Rs. 400; and that the notices of sale and *istahars* were not published as required by the Regulation. He accordingly sought to have the sale set aside and to be confirmed in possession of the tenure.

Defendants Nos. 1 and 2 contested the suit. They denied that there had been any fraud or collusion in the matter, and pleaded that the notices and *istahars* had been duly published. They further stated that Rs. 60 was the proper value of the taluq.

The only issues raised in the cases were the following:—

- (i) Whether the notices of sale were served upon the defaulter under the provisions of Regulation VIII of 1819? Were there any irregularities in the publication of the sale? Was the sale a fraudulent one?
- (ii) Is the putni sale fit to be set aside?

The Munsiff did not find that there had been any collusion or fraud on the part of the defendants or that the price fetched was inadequate, as he held this to be immaterial for the purpose of the case, which he decided upon the question of the non-service of the notices required by the Regulation. He held that there was no evidence on the record to prove the service of the notice at the Collector's kutchery; that though an attempt had been made to

prove the service at the zemindar's kutcheri, it had failed; and even the kutcheri where it was alleged to have been made was not shown to be the zemindar's sudder kutcheri within the meaning of section 8, clause 2 of the Regulation; that the plaintiff had no kutcheri or manager on the land, and that there had been no service on him or attempted service, though notices had been affixed on the house of the former putnidar, defendant No. 3, whose rights had admittedly vested in the plaintiff before the date of service; and that even as regarded such service, the attestation by three substantial persons as required by the Regulation was wanting, the attestation being by only two persons, one being a servant of the zemindar. He accordingly held that the service of the notices was insufficient, and on that ground gave the plaintiff a decree setting aside the sale with costs against the zemindar, defendant No. 1, and ordered the refund of the purchase-money to defendant No. 2, the purchaser.

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Defendant No. 1 appealed.

The Subordinate Judge considered that the decision of the case depended upon the question of on whom the onus of proof lay, and he held that the plaintiff was bound to prove the irregularities he alleged when he was asking for relief on the ground of such irregularities and fraud; he relied on the provisions of section 14 of the Regulation to the effect that any one contesting the right of the zemindar to make a sale might, in a suit to reverse such sale, upon *establishing a sufficient plea*, obtain a decree, as supporting this proposition, and stated that he could find nothing in the cases of *Bhugwan Chunder Dass v. Sudder Ally* (1), *Mahomed Zahir v. Abdul Hakim* (2), and *The Maharani of Burdwan v. Krishna Kamini Dasi* (3), which had been relied on by the pleader for the plaintiff, as establishing the contrary proposition, that the onus of proof of service lay on the defendant. Upon the question of fraud and irregularity in publication of the notice at the Collector's kutcheri he agreed with the Munsiff in holding that there was no proof of fraud, and no evidence on either side to show that the notice was stuck up at the Collector's kutcheri as

(1) I. L. R., 4 Calc., 41.

(2) I. L. R., 12 Calc., 67.

(3) I. L. R., 14 Calc., 365.

1891 required by the section; but he held that as the onus of proving the non-publication lay on the plaintiff, he could not find that it had not been so published, or that there had been any irregularity in its publication there. As regarded the publication of the notice at the sudder kutcheri of the zemindar, he found that this was proved by the defendants' witnesses, whom he saw no reason to disbelieve in the absence of any evidence to the contrary on the part of the plaintiff, and he disagreed with the finding of the Munsiff as to the kutcheri, where such service was effected, not being the sudder kutcheri within the meaning of the section. He also came to the opposite conclusion to that arrived at by the lower Court upon the question as to the publication at the kutcheri or at the principal town or village upon the land of the defaulter, and holding that the provisions of section 8 of the Regulation were merely directory, considered the attestation sufficient. On the whole he came to the conclusion that the plaintiff had wholly failed to establish a *sufficient plea* within the meaning of section 14, and that the suit should have been dismissed, and he accordingly reversed the decision of the Munsiff, and dismissed the plaintiff's suit with costs.

Baboo *Hem Chunder Banerji* and Baboo *Bassunt Coomar Bose* for the appellant.

Dr. *Rash Bikary Ghose* and Baboo *Bhuban Mohan Doss* for the respondent.

The judgment of the High Court (PIGOT and MACPHERSON, JJ.) was as follows:—

In this case the appellant brings a suit to set aside the sale of a putni under Regulation VIII of 1819, on the ground that the sale was invalid, and his case is that the sale was invalid by reason of the notices required by sub-section 2, Section VIII, not having been proved. The Courts have held that there is no evidence one way or another as to the service of such notices.\* The plaintiff

\* *Editor's note.*—This statement should be limited to the service of the notice at the Collector's kutcheri, the arguments during the hearing of the appeal having been confined to the effect of the non-service of that particular notice on the validity of the sale. See post page 725. This note is added with the approval of the Judges (Pigot and Macpherson, JJ.) who decided the case.

says that in the absence of such evidence the case must be decided in his favour. The defendant says that it lies on the plaintiff to prove that such notices were not served, and unless that is proved the defendant is entitled to a decision in his favour upon that issue. We think that the decisions of their Lordships of the Privy Council in the case of *Maharajah of Burdwan v. Tarasundari Debi* (1), and particularly the passage at p. 624 of that report, and also the case of *Mahomed Zamir v. Abdul Hakim* (2), decided in this Court, in which that Privy Council case is referred to, establish the proposition that in such a case it lies upon the defendant to show that the sale was preceded by the notices required by section 8, clause 2, the service of which notices is an essential preliminary to the validity of the sale.

We therefore allow the appeal, set aside the decree of the lower Court, and decree the suit with costs of this appeal and in the lower Courts.

H. T. H.

*Appeal allowed.*

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Tottenham and Mr. Justice Ghose.*

RAJNARAIN MITRA, THE RECEIVER IN THE PLACE OF THE DEFENDANTS NOS. 1 TO 4, v. ANANTA LAL MONDUL AND ANOTHER (PLAINTIFFS), AND KARALI CHARAN MUKERJEE AND OTHERS (DEFENDANTS),

1892  
March 5.

AND

KRISTO LAL CHOWDHURI AND OTHERS (DEFENDANTS) v. ANANTA LAL MONDUL AND ANOTHER (PLAINTIFFS), AND THE REMAINING DEFENDANTS.

*Putni Taluq—Sale of Putni tenure for arrears of rent—Bengal Regulation VIII of 1819, s. 8, cl. 2, and s. 14—Publication of notice in the Collector's kutcheri—Non-publication of notice in manner prescribed, effect of, on the validity of a sale of a Putni tenure—"Sufficient plea."*

The sticking up or publication in a conspicuous part of the Collector's kutcheri of a notice in accordance with the provisions of clause 2 of section

Appeals from Original Decree Nos. 126 and 133 of 1890 against the decree of Baboo Kedar Nath Chatterji, Subordinate Judge of Birbhum, dated the 23rd of January 1889.

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

(2) I. L. R., 12 Calo., 67.