

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra.

1927
April, 6.

SHEIKH MUHAMMAD RAZA (DEFENDANT-APPELLANT) *v.*
SHEIKH RAFIQ HUSAIN AND ANOTHER (PLAINTIFFS-
RESPONDENTS).*

United Provinces Land Revenue Act (LII of 1901), sections 141, 161 and 185, applicability of—Sale in execution of decree for land revenue obtained by landlord, whether governed by sections 141 and 161 of the United Provinces Land Revenue Act—Decree of superior proprietor against under-proprietor for arrears of rent—Sale by Collector for arrear of Government revenue and by superior proprietor in his decree for revenue paid, difference between.

Held, that the principles laid down in sections 141 and 161 of the United Provinces Land Revenue Act (III of 1901) cannot be considered as applicable to the case of private sales or to sales in execution of decrees obtained by private individuals from the Revenue Court in respect of the Government revenue. The privileges attached to a sale held by a Collector who proceeds to realize the arrears of revenue by selling the land in respect of which that arrear is due, cannot be claimed by a private person who pays the Government revenue in respect of the land owned by another, or obtains a decree for the same and sells land in execution of that decree.

If the Collector proceeds to realize the rent due in respect of an under-proprietary holding, as required by section 185 of the United Provinces Land Revenue Act, and proceeds to sell the land the provisions of section 161 would no doubt be applicable in the case of such a sale; but the superior proprietor, who has obtained a decree for arrears of rent, is not competent to sell the land ignoring the previous incumbrances and decrees on the said land. In such a case the superior proprietor cannot take the same advantages which have been conferred by the legislature on the Collector, when he proceeds to sell the land to realize the arrears of Government revenue whether *suo moto* or on an application by the

* Second Civil Appeal No. 45 of 1927, against the decree of Krishna Nand Pande, Additional Subordinate Judge of Sultanpur, dated the 15th of November, 1926.

superior proprietor. [*Seth Chitor Mal v. Shib Lal* (1), *Kinu Ram Das v. Muzaffar Hosain Shaha* (2), *Gopi Nath Bagdi v. Ishur Chandra Bagdi* (3), *Shivrao Narain v. Pundlik Bhaire* (4), *Abdur Rahman Khan v. Bhawanji Din* (5), relied upon, and *Raja of Vizianagram v. Setrucherla Sonasekhararaz* (6), dissented from.]

Mr. *Haidar Husain*, for the appellant.

Mr. *Ali Zaheer*, for the respondents.

MISRA, J. :—This appeal arises out of a suit brought by the plaintiffs-respondents for a declaration that defendant No. 1 had no right to sell in execution of his decree against defendant No. 2 the *sarpat* produce of certain land which had been purchased by defendant No. 3. The plaintiffs alleged that the land on which the *sarpat* grew formed part of a 7 annas, 6 pies share of village Daryapur in which they were co-sharers to the extent of 6 annas, 8 pies, and that, therefore, defendant No. 1 had no right to sell the entire *sarpat* growing on that land in execution of his decree against defendant No. 2 to which they were no party. The plaintiffs, therefore, alleged that defendant No. 3 did not by his auction purchase acquire any right to the said *sarpat* so far as their share was concerned and hence they claimed a money decree in respect of the value of their share in the *sarpat* from defendant No. 1, who had appropriated the entire sale-price paid by defendant No. 3 at the time of auction.

Among other defences one of the pleas raised, with which alone we are concerned in this appeal, is that the decree in execution of which defendant No. 1 put the *sarpat* to sale was a decree for arrears of revenue and consequently he was entitled to sell the

1927

SHEIKH
MUHAM-
MAD RAZA
v.
SHEIKH
RAFIQ
HUSAIN.

(1) (1892) I.L.R., 14 All., 273 (2) (1887) I.L.R., 14 Cal., 809.
(F.B.).

(3) (1895) I.L.R., 22 Cal., 800. (4) (1902) I.L.R., 26 Bom., 437.

(5) Select Decision of United Pro- (6) (1902) I.L.R., 26 Mad., 686.

vinces Board of Revenue, No. 7
of 1888.

1927

SHEIKH
MUHAM-
MAD RAZAv.
SHEIKH
RAFIQ
HUSAIN.

Misra, J.

entire produce of the land irrespective of the consideration that the plaintiffs had previously obtained a decree for their share in the said plot. The contention was that the revenue paid by defendant No. 1, being in respect of the entire 7 annas, 6 pies share was a charge upon the whole plot and the plaintiffs could not enforce their decree by ignoring the said charge. Both the courts below have overruled this plea and granted the plaintiffs a decree in respect of the value of their share in the *sarpat* growing on the land in dispute.

In second appeal the only point which was argued before me was whether by payment of the Government revenue defendant No. 1 could create a charge in respect of the entire 7 annas, 6 pies share, which could be enforced against the plaintiffs although they were no party to the decree obtained by him. The learned Counsel for the appellant relied upon the provisions of sections 141, 161 and 185 of the United Provinces Land Revenue Act (III of 1901). It was argued that inasmuch as under section 141 it was laid down that the revenue assessed on a *mahal* was to be the first charge on the entire *mahal*, and also on the rents, profits or produce thereof the rents, profits or produce thereof could not be applied in satisfaction of a decree or order of any civil court until all arrears of revenue due in respect of the *mahal* had been paid. It was urged that defendant No. 1 was, therefore, entitled to sell in execution of his decree, which was in respect of the Government revenue, the whole produce of that *mahal* and was justified in ignoring the decree of the civil court obtained by the plaintiffs in their favour in respect of a portion of the said share. In reply it was pointed out that the decree obtained by defendant No. 1 was merely on account of arrears of rent in respect of an under-proprietary tenure which could not be considered as equivalent to arrears of

Government revenue and that even if they could, the contention raised by defendant No. 1 was not sound.

In my opinion the contention raised by defendant No. 1 in this appeal cannot be maintained. There can be no doubt that the legislature has, in enacting section 141 of the United Provinces Land Revenue Act, 1901, laid down that the Government revenue assessed on every *mahal* is the first charge on that *mahal* and on the rents, profits or produce thereof. This principle is necessary in order to give security to the Government for realization of its revenues. It cannot also be doubted that under section 161 of the said Act lands appertaining to a *mahal*, if sold in lieu of arrears of the Government revenue, shall be deemed to have been sold free from all incumbrances. It must, however, be pointed out that the principles laid down in these sections of the Act cannot be considered as applicable to the case of private sales or to sales in execution of decrees obtained by private individuals from the revenue court in respect of the Government revenue. The privileges attached to a sale held by a Collector who proceeds to realize the arrears of revenue by selling the land in respect of which that arrear is due, cannot be claimed by a private person who pays the Government revenue in respect of the land owned by another, or obtains a decree for the same and sells land in execution of that decree.

The principle laid down in section 185 of the Act does not lay down any new principle but only provides that in case the rent of any under-proprietary tenure falls due the superior proprietor may apply in writing to the Collector to realize the same; and the Collector may, if he is satisfied that the amount claimed is due, shall proceed to recover such arrear of rent from the defaulter as if it were an arrear of Government revenue. If the Collector, therefore, proceeds to realize

1927

SHEIKH
MUHAM-
MAD RAZA
v.
SHEIKH
RAFIQ
HUSAIN.

Misra, J.

1927

SHEIKH
MUHAM-
MAD RAZA
v.
SHEIKH
RAFIQ
HUSAIN.

Misra, J.

the rent due in respect of an under-proprietary holding and proceeds to sell the land the provisions of section 161 would no doubt be applicable in the case of such a sale. The point, however, remains whether a superior proprietor, who has obtained a decree for arrears of rent is competent to sell the land ignoring the previous incumbrances and decrees on the said land. I am of opinion, as indicated above, that in such a case the superior proprietor cannot take the same advantages which have been conferred by the legislature on the Collector, when he proceeds to sell the land to realize the arrears of Government revenue whether *suo moto* or on an application by the superior proprietor.

I am glad to find that this view of mine is supported by a number of decisions of the Allahabad, Calcutta and Bombay High Courts. In *Seth Chitor Mal v. Shib Lal* (1) the learned Judges of the Allahabad High Court laid down that the legislature had not given or recognized in the North-Western Provinces any right of charge or lien in favour of a person paying the Government revenue on behalf of another, nor did it provide any means by which such a charge could be enforced. This was a case in which a co-sharer lambardar had obtained a decree in a court of revenue under section 93, clause (g) of the North-Western Provinces Rent Act (XII of 1881) for recovery of the arrears of revenue paid by him and in execution of that decree had sold the lands in respect of which the arrears had been due and the question was whether he could ignore a previous mortgage decree and the sale thereunder.

Section 146 of the North-Western Provinces Rent Act (XIX of 1873) which laid down the same principle as is covered by section 141 of the United Provinces Land Revenue Act was relied upon in support of the

(1) (1892) I.L.R., 14 All., 273 (F.B.).

principle stated above. EDGE, C.J., in an elaborate and exhaustive judgment dealt with the contention whether a private person who paid the Government revenue in respect of the land belonging to another person could obtain a lien or charge over that land in respect of the amount so paid and held that the contention could not be considered to be sound. This opinion was concurred in by TYRRELL, KNOX and BLAIR, JJ. though MAHMOOD, J., dissented. In *Kinu Ram Das v. Muzaffar Hosain Shaha* (1) a Full Bench of the Calcutta High Court had also taken the same view, that a co-sharer, who had paid the whole of revenue in respect of a *mahal* and had thus saved the entire estate, could not by reason of such payment acquire a charge on the share of his defaulting co-sharer. This case was quoted with approval in the Allahabad case cited above. In *Gopi Nath Bagdi v. Ishur Chandra Bagdi* (2) PIGOT and STEVENS, JJ., held that where the plaintiffs and defendants were co-tenants in a certain *jote* which was sold by auction in execution of a decree for rent and the plaintiffs paid the decretal amount and got the sale set aside, they could not by such payment acquire a charge on the shares of their defaulting co-tenants. In *Shivrao Narain v. Pundlik Bhair* (3) JENKINS, C.J., and CROWE, J., took the same view. Two principles are, therefore, clear: *firstly*, that to acquire a charge on the lands in respect of which the Government revenue has been paid there must be an express statutory provision of law justifying such a charge; *secondly*, that where a particular land is described by the statute to be liable to be sold by the Collector free from all incumbrances that provision cannot be availed of in the case of a private sale or in the case of a sale held in execution of a decree obtained

1927

SHEIKH
MUHAM-
MAD RAZA
v.
SHEIKH
RAFIQ
HUSAIN.

Misra, J.

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1927

SHEIKH
MUHAM-
MAD RAZA
v.
SHEIKH
RAFIQ
HUSAIN.

by a private person in respect of the arrears of Government revenue. In *Chandra Bhal v. Suraj Prasad and others* (1), CHAMIER, J. C., (now Sir EDWARD CHAMIER) took the same view.

This was a case in which the learned Judge dealt with section 141 of the United Provinces Land Revenue Act (III of 1901). In the course of his judgment he remarked as follows:—

Misra, J.

“ But it is contended that the law has been altered by the United Provinces Land Revenue Act of 1901, section 141. The decisions of the Full Benches of the Calcutta and Allahabad High Courts were before the legislature when the United Provinces Land Revenue Act of 1901 was passed. If the legislature had intended to give a person in the position of the seventh defendant to this case a charge on property in circumstances such as those with which we have to deal here it certainly would have used language very different from that which is used in section 141 of the Act. That section provides only that in the case of a *mahal* the revenue assessed thereon shall be the first charge on the entire *mahal* and on the rents, profits or produce thereof; and the rents, profits or produce of a *mahal*, shall not be applied in satisfaction of any decree or order of a civil court until all the arrears of revenue due in respect of the *mahal* have been paid. This section does not appear to me to give a lambardar or other person who pays revenue for another a charge on the share of that other. The meaning of the section, I take it, is that revenue is a first charge on

(1) Second Civil Appeal No. 349 of 1910.

the *mahal* for the benefit of the Government.”

1927

SHEIKH
MUHAM-
MAD RAZA
p.
SHEIKH
RAFIQ
HUSAIN.

Misra, J.

The same principle has been recognized by the Board of Revenue in *Abdur Rahman Khan v. Bhawanî Din* (1). In this case a judgment-creditor wanted to proceed in execution of his decree against the land which belonged to his judgment-debtor but which had previously been sold in execution of a civil court decree. The decree obtained by the judgment-creditor was a decree in respect of arrears of rent. The learned Members observed that it was not within the power of the judgment-creditor to proceed against the purchaser of the property though the Government could do so. They remarked that the position of the Government was different from that of a private judgment-creditor and the remedy open to the Government could not be availed of by him. In *Raja of Vizianagram v. Setrucherla Sonashekhararaz* (2) a different view has been taken but with all the respect due to the learned Judges of the Madras High Court I am unable to agree with the view.

In my opinion, therefore, defendant-appellant had no right to enforce his sale in execution of his decree in preference to the decree obtained by the plaintiffs-respondents on the ground that the decree obtained by him was in respect of arrears of rent due on account of an under-proprietary holding which in law should be placed on the same footing as the arrears of Government revenue. The decree granted by the courts below to the plaintiffs-respondents is, therefore, correct and must be maintained.

I, therefore, dismiss the appeal with costs.

Appeal dismissed.

(1) Select Decision of United Provinces Board of Revenue, No. 7 of 1883.

(2) (1902) I.L.R., 26 Mad., 686.