

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan and Mr. Justice R. L. Yorke

SAT NARAIN (PLAINTIFF-APPELLANT) v. CO-OPERATIVE SOCIETY, AND ANOTHER (DEFENDANTS-RESPONDENTS)*

U. P. Land Revenue Act (III of 1901), sections 163, 164, 173, 183 and 233(m)—Suit for declaration that sale of property was ineffective and inoperative against plaintiff—Jurisdiction of Civil Court, if barred—Section 233(m) United Provinces Land Revenue Act, applicability of—Jurisdiction of Civil and Revenue Courts.

Where a sale was held only twenty-three days after the issue of the proclamation of sale in complete disregard of the provisions of section 163 of the Land Revenue Act and no notice of the sale was given to the plaintiff, who was also a minor at the time, as was required by section 164 of the Act, *held*, that the sale was conducted with material irregularity and it would be a travesty of justice to hold that a minor whose property is being wrongly sold by the revenue authorities has no remedy left to him if he does not apply to the Commissioner, under section 173 of the Land Revenue Act. Section 233(m) bars a suit against the Secretary of State but it cannot bar a suit to recover compensation from a third person by whose action the plaintiff has been put to loss. *Tulsa Kunwar v. Jageshwar Prasad and others* (1), followed. *The Secretary of State for India in Council v. Mahadei and others* (2), *Abdullah and another v. The Secretary of State for India in Council* (3), *Khud Mukhtar Bank, Utrawan v. Bhagwandin* (4), *Co-operative Society v. Qadir* (5), and *Khizarajmal v. Daim* (6), referred to.

The case was originally heard by Hon'ble Mr. Justice Radha Krishna Srivastava, who referred it to a Bench of two Judges for decision. His order of reference is as follows:

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RADHA KRISHNA, J.:—The learned counsel for the plaintiff appellant in this case has argued the following points among others:

1. That Sat Narain was not the legal representative of the deceased Ram Prasad and the resolution of the Co-

*Second Civil Appeal No. 60 of 1937, against the order of Mr. Pratap Shankar, Additional Civil Judge of Lucknow, dated the 21st October, 1936.

(1) (1906) I.L.R., 28 All., 56.

(2) (1896) I.L.R., 19 All., 127.

(3) (1927) I.L.R., 49 All., 701.

(4) (1935) I.L.R., 11 Luck., 106.

(5) (1934) O.W.N., 1060.

(6) (1904) I.L.R., 32 Cal., 296.

operative Society, Sarai Shahzadi, District Lucknow, to the effect that they could proceed for the realisation of the debt of the deceased against Sat Narain was *ultra vires*.

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2. That in any case the personal property of Sat Narain was not liable and section 233(m) is no bar to a suit in a Civil Court because in the proceedings for sale there was no proper party representing the deceased.

3. That the provisions of sections 163, 164, 173 and 183 as well as section 233(m) of the United Provinces Land Revenue Act would operate only where the defaulter himself or his legal representative is a party to the proceedings for realisation of the debt and not to a case like the present.

These grounds have not been specifically taken in the memorandum of appeal but they are grounds of law and I have allowed them to be raised.

I have heard the learned counsel for the parties at length on the above questions and I consider that they involve the determination of the scope and the interpretation of the sections mentioned above of the United Provinces Land Revenue Act. As the questions involved in the decision of his case are very important, I refer this case for decision by a Bench of two Hon'ble Judges under section 14(2) of the Oudh Courts Act.

Messrs. *Ram Bharosey Lal, Sri Ram and Murlī Manohar Lal*, for the appellants.

Mr. *Mohammad Jafar Husain*, for the respondents.

ZIAUL HASAN, J.:—This is a plaintiff's second appeal against a decree of the learned Additional Civil Judge of Lucknow dismissing his suit for a declaration in respect of some property. Sat Narain, plaintiff-appellant is the grandson of Gayadin, brother of Ram Prasad. Ram Prasad was a member of the Co-operative Society of Sarai Shahzadi. The appellant was nominated by Ram Prasad as his heir though his wife Sukhdei, defendant No. 2, is still living. Ram Prasad appears to have died in or about 1935. The Society held a decree against him and on the 8th November, 1935, they passed a resolution that Sat Narain's name should

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be substituted in the decree in place of Ram Prasad, deceased. On the 12th December, 1935, a warrant of attachment was issued in respect of the appellant's property, moveable and immoveable. On the 13th December, 1935, a sale proclamation was issued fixing the 5th January, 1936, for sale. It was not however served on the appellant as required by law. On the 5th January, 1936, the attached immoveable property was sold and on the 1st February, 1936, the suit which has given rise to this appeal was brought by the appellant against the Co-operative Society concerned and Mst. Sukhdei, widow of Ram Prasad, for a declaration that the property sold belongs to him and that the sale is consequently void and ineffective.

Both the courts have held that Ram Prasad and his brother Gaya Din were separate and that the property in suit is the property of the appellant but both have dismissed the suit holding that it was barred by section 233(m) of the Land Revenue Act. The plaintiff therefore appeals.

Section 233(m) bars the jurisdiction of the Civil Courts with respect to "*claims connected with or arising out of the collection of revenue (other than claims under section 183) or any process enforced on account of an arrear of revenue or on account of any sum which is by this or any other Act realizable as revenue.*" The wording of this clause is no doubt very wide and it is because of this that suits of various kinds both against private individuals as well as Government have been held to be barred by this clause. For instance in *Secretary of State for India in Council v. Mahadei* (1) in which in satisfaction of an arrear of revenue by certain defaulters some cattle belonging to the plaintiff who had no concern with the land in respect of which the arrear was due, were sold and the suit was brought against the Secretary of State, the defaulters and the purchaser of the cattle, it was held

(1) (1896) I.L.R., 19 All., 127.

that the remedy of the owner of the cattle lay entirely in the Courts of Revenue and that no suit would lie in a Civil Court respecting the sale. Similarly in *Abdullah v. Secretary of State for India in Council* (1) the property of the plaintiffs had been attached by the Collector at the request of the liquidator of a Co-operative Society on account of a debt due by a member of the Society, the plaintiffs' objections to attachment was rejected but the plaintiff got the property released on the security of a third person. Subsequently a suit was brought by the plaintiffs and the surety against the Secretary of State, the liquidator and the defaulting member. It was held that section 233(m) of the Land Revenue Act barred the claim. In this Court also the same view was taken in *Khud Mukhtar Bank, Utrawan v. Bhagwandin* (2) in which a Co-operative Bank had obtained a decree against a member of the Bank and in execution attached a house and a *gondah*. The father of the judgment-debtor filed an objection claiming the property to be his but his objection was disallowed. He then brought a regular suit for a declaration that the house and the *gondah* belonged to him. The trial court decreed the suit in part and the Bank's appeal was dismissed by the lower appellate court. This Court dismissed the suit *in toto* and held that it was barred by section 233(m) of the Land Revenue Act.

The learned counsel for the respondent has also relied on the case of *The Co-operative Society v. Qadir* (3) but the judgment in that case shows that though section 233(m) of the Land Revenue Act was also considered, the judgment was actually based on clause 6 of section 42 of the Co-operative Societies Act.

In *Tulsa Kunwar v. Jageshwar Prasad* (4) however, in which the plaintiff sued in the Civil Court to recover money from the defendants on the allegation that certain property belonging to her having been wrongfully attached in order to realise arrears of Government

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(1) (1927) I.L.R., 49 All., 701.

(2) (1935) I.L.R., 11 Luck., 106.

(3) (1934) O.W.N., 1060.

(4) (1906) I.L.R., 28 All., 563.

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revenue due from the defendant, the plaintiff had, in order to save her own property, paid the arrears of revenue due from the defendants to Government. It was held that the jurisdiction of the civil courts to entertain the suit was not ousted by the provisions of the U. P. Land Revenue Act, sections 183 and 233(m).

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STANLEY, C. J., remarked in his judgment:

“There is no doubt that the claim of the plaintiff is in a sense connected with the collection of revenue but had the Legislature when it enacted this clause in contemplation any other claims than claims which might be advanced by parties liable to pay revenue? I think not. The Act is one which regulates the relations of the Government on one side and a limited class of persons, namely, sharers in revenue paying mahals on the other. General words admit of restriction according to the subject to which they relate and the scope and object of the enactment. If the Legislature intended so important an innovation as is contended for, it would I think have manifested its intention in clear and explicit terms. The general presumption is against an intention to disturb the established state of the law, or to interfere with the vested rights of subjects, and there is a strong leaning against so construing a statute as thereby to oust or restrict the jurisdiction of the civil courts. In the provision that ‘no person shall institute a suit’ it seems to me that the Legislature had in contemplation the class of persons to whom the Act in its general bearing is applicable, that is to shareholders liable to pay Government revenue and not to strangers outside this body. I do not think it was intended to protect the Government against claims in respect of illegal acts done to the detriment of persons who are under no liability to pay Government revenue. It was merely intended to protect the Government against claims of members of the revenue paying class.”

BANERJI, J. who concurred with the judgment of the learned Chief Justice said:

“I also concur in holding that section 233 clause (m) does not bar the suit. The language of the section is no doubt very wide; but as the learned Chief Justice has pointed out, the Legislature could not have intended that except a suit under section 183 (which in our opinion can

only be brought by the defaulter) no other suit of any description could be instituted by any one in connection with the "collection of revenue or any process enforced on 'account of an arrear of revenue'. It seems to me that the section forbids a suit by the defaulter against the Government or possibly by any other person against the Government; but it does not I think preclude a person in the position of the plaintiff from maintaining a suit like the present. Were we to accept the contention of the respondent, the plaintiff would be wholly without remedy."

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As remarked by BANERJI, J. the language of the section is undoubtedly very wide but this is to my mind pre-eminently a case in which the view adopted by STANLEY, C.J. and BANERJI, J. should be followed. The plaintiff was a minor when his property was sold. It is also conceded that the sale was conducted with material irregularity. It was held only twenty-three days after the issue of the proclamation of sale in complete disregard of the provisions of section 163 of the Land Revenue Act. It is also admitted that no notice of the sale was given to the plaintiff as was required by section 164 of the Act. It would in my opinion be a travesty of justice to hold that a minor whose property is being wrongly sold by the revenue authorities has no remedy left to him if he does not apply to the commissioner under section 173 of the Land Revenue Act. Their Lordships of the Judicial Committee have clearly laid down in *Khiarajmal v. Daim* (1) that a court had no jurisdiction to sell the property of persons who are not parties to the proceedings or properly represented on the record and that as against such persons, the decrees or sales under them were void without any proceedings to set them aside.

In view of what I have said above, I would follow the view of their Lordships STANLEY, C.J., and BANERJI, J. in *Tulsa Kunwar v. Jageshar Prasad* (2) and allowing the appeal would decree the appellant's suit with costs.

YORKE, J.:—I am in strong sympathy with the view taken by my learned brother in this case but I was at

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(1) (1904) I.L.R., 32 Cal., 296.

(2) (1906) I.L.R., 28 All., 563.

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first inclined to think that in view of the current of decision in

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it would not be proper to follow the decision in *Tulsa Kunwar v. Jageshar Prasad and others* (4). On further consideration I am with the greatest respect of opinion that section 233(m) of the United Provinces Land Revenue Act is rightly interpreted in this latter ruling and that although that section bars a suit against the Secretary of State it cannot bar a suit to recover compensation from a third person by whose action the plaintiff has been put to loss. I would, therefore, agree with the order proposed by my learned brother.

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ZIAUL HASAN and YORKE, JJ.:—We allow the appeal and decree the appellant's suit with costs throughout.

Appeal allowed.

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M. GHULAM HUSAIN KHAN AND ANOTHER (DEFENDANTS-APPELLANTS) v. M. FAIYAZ ALI KHAN AND OTHERS (PLAINTIFFS AND DEFENDANT-RESPONDENTS)¹

Contract Act (IX of 1872), section 127—Consideration—Surety—Guarantee bond—Past benefit to principal debtor, whether good consideration for guarantee bond—Thing done or promise made for principal debtor under section 127, whether necessary to be at desire of surety.

The word "done" in section 127 of the Indian Contract Act shows that past benefit to the principal debtor can be good consideration for a bond of guarantee. *Jagadindra Nath Roy*

¹Second Civil Appeal No. 22 of 1938, against the order of Mr. Ziauddin Ahmad, District Judge of Gonda, dated the 9th October, 1937.

(1) (1896) I.L.R., 19 All., 127. (2) (1927) I.L.R., 49 All., 701.
(3) (1935) I.L.R., 11 Luck., 106. (4) (1906) I.L.R., 28 All., 563.