APPELLATE CIVIL.

Before Coutts and Ross, JJ.

BENI RAY 1922

v. January, 9

BABUI BACHA KUER. *

Public Demands Recovery Act, 1895 (Ben. Act I of 1895), sections 10 and 31, "and in some conspicuous part of the land"——Notice fixed on outer door of judgment-debtor's residence, whether must also be displayed on the land——judgment-debtor temporarily away from home, whether notice by fixing on door of residence is sufficient——Notice not served on one of several co-sharers by reason of death, effect of sale.

The words "and also in some conspicuous part of the land" in section 31 of the Public Demands Recovery Act, 1895, refer only to cases in which the service is effected by fixing a copy in some conspicuous place in the office of the Certificate Officer and not to a case in which the notice is served by fixing a copy on the outer door of the house in which the judgment-debtor ordinarily dwells or carries on business.

Where the person against whom a certificate had been issued was temporarily away from home and service could not be effected on any adult male member, *held*, that service by fixing a copy on the outer door of the house in which the judgment-debtor ordinarily resided was sufficient service.

Ambica Prasad v. *Gopal Buksh Das* (1), distinguished.

Where a certificate is issued in respect of property in which there are more than one co-sharers, and notice is not served on one of the co-sharers by reason of his death, the sale is void only in respect of the share of the deceased co-sharer.

The facts of the case material to this report were as follows :—

On the death of Ramsungand Rai a quarter of his 7-annas share in village Chitrauli was inherited by each of his four sons Triloke, Mahadeo, Sirtaj, and Sheobasant. In 1905 Ruder Prasad, defendant No. 2,

* Appeal from Appellate Decree No. 1080 of 1920, from a decision of G. J. Monahan, Esq., District Judge of Saran, dated the 1st April, 1920, reversing a decision of Mr. Mahmud Hasan, Subordinate Judge of Saran, dated the 23rd February, 1920.

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purchased the 5-annas 3-pies share belonging to the branches of Triloke, Sirtaj and Sheobasant in a certificate sale for arrears of road cess. The purchaser sold the share to Ajgaibi Dube, defendant No. 3, who subsequently sold it to Babui Bacha Kuer, defendant No. 1. The present suit was instituted by the heirs of Triloke and Sirtaj for the recovery of their shares. They alleged that the certificate sale was invalid because the road cess was not in fact in arrears and the notice required by section 10 of the Public Demands Recovery Act, 1895, had not been properly served. It was also alleged that the sale-proclamation was not properly served and that in spite of the sales to defendants 2, 3, and 1, the plaintiffs had remained in possession. The first court held that the road cess was not in arrears at the time the certificate was issued; that the notice required by section 10 was not properly served; that Sirtaj was dead, and Bachu, the son of Triloke, and Suraj Rai, defendant No. 4, the son of Sheobasant, were away in Calcutta, at the time; that service of the sale-proclamation was not properly proved. The suit was decreed. Defendant No. 1 appealed to the District Judge. The latter held that the plaintiffs did not retain possession after the certificate sale; that the notice under section 10 was served on Suraj and Bachu by beat of drum and by fixing a copy on the door of their residence while they were in Calcutta; and that the road cess was in arrears when the certificate was issued. The certificate sale was declared to be void in respect of the 1-anna 9-pies share of Sirtaj, and held to be valid with respect to the shares of Triloke and Sheobasant.

The plaintiffs appealed to the High Court.

Baikuntha Nath Mitter, for the appellants.

COUTTS, J.—The facts of this case are shortly as follows:—One Ramsungand Rai had a 7-annas share in village Chitrauli. His four sons Triloke, Mahadeo, Sritaj and Sheobasant, on his death, each inherited one-quarter share. In the year 1905, 5-annas 3-pies which belonged to the branches of Triloke, Sirtaj, and Sheobasant was sold in a certificate sale for arrears of

road cess and purchased by defendant No. 2, Ruder Prasad. Ruder Prasad sold to Ajgaibi Dube, defendant No. 3, and subsequently Ajgaibi sold to Babui Bacha Kuer, the defendant No. 1. The heirs of Triloke and Sirtaj sued these defendants for recovery of their shares on the ground that the certificate sale was invalid because there were no arrears of road cess and because the notice under section 10 of the Public Demands Recovery Act had not been properly served. There were also allegations that the sale-proclamation was fraudulently served and that in spite of the various sales the plaintiffs had remained in possession. The suit was decreed in the Court of first instance, but on appeal to the learned District Judge the suit was decreed in respect of 1-anna 9-pies, the share of Sirtaj who was dead before notices were served, and the plaintiffs who represented his share were declared to be entitled to recover possession on payment to the defendant No. 1 of the sum due to her on account of the payment of encumbrances. The suit was remanded for determination of the exact amount which was payable. The plaintiffs appeal.

The first point urged before us is that the sale was void and inoperative because the notice of demand had not been legally served on the plaintiffs, and the argument on this point is divided into two branches; *first*, that it had not been served on some conspicuous part of the land, and, *secondly*, that sufficient diligence had not been exercised in order to effect a personal service. The first branch of the argument is in my opinion based on a misreading of section 31 of the Public Demands Recovery Act. The portion of that section with which we are concerned runs as follows:—

"And, if no such adult male member of his family can be found, the notice may be served by fixing a copy on the outer door of the house in which the judgment-debtor ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the Certificate Officer issuing the same, and also in some conspicuous part of the land, if any, affected by the service of the notice."

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It seems clear from the wording of this section that the latter portion of the clause, "and also in some conspicuous part of the land", refers only to cases in which the service is effected by fixing a copy in some conspicuous place in the office of the Certificate Officer and not to cases in which the notice is served by fixing a copy on the outer door of the house in which the judgment-debtor ordinarily dwells or carries on business. If it had been otherwise, the words " by fixing a copy thereof " would not have been inserted between the words " or " and " in some conspicuous place".

The next branch of the argument is that due diligence was not exercised in order to have the notices personally served. This contention must also in my opinion fail. It appears that the judgment-debtor could not be found at home nor could service be effected on any adult male member ; and the only information which could be obtained was that the persons on whom notice was to be served were in Calcutta. With meagre information of this kind it was impossible to have a notice served in Calcutta, and the only alternative left was to serve by fixing the copy on the outer door of the house, which was done. We have been referred by the learned Vakil for the appellants to the decision of *Ambica Prasad* v. *Gopal Buksh Das* (1). That case, however, has no bearing on the present case, because in that case there was a permanent change of residence, whereas in the case before us the persons to be served had only gone to Calcutta for a short time and were returning to their own homes.

The last point which has been urged before us is that as the sale has been found to be void in respect of the share of Sirtaj because he was dead before the notice was said to have been served, the sale being one and indivisible it is wholly void. No authority for this proposition has been shown to us and in any case on the facts of the present case it cannot succeed. Each of the persons to be served had

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a one-third share in the property, so that even if the sale was void in respect of the share of one of them it would not be barred in respect of the shares of others whose shares were entirely separate.

In the result I see no reason to interfere with the decision of the learned Subordinate Judge and I would dismiss this appeal.

Ross, J.—I agree.

Appeal dismissed.

REVISIONAL CIVIL.

Before Coutts and Ross, JJ.

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AJODHYA MAHTON

v.

MUSSAMMAT PHUL KUER.*

Code of Civil Procedure, 1908 (Act V of 1908), section 151, Order IX, rule 13——Ex parte *final decree*——*whether may be set aside on the ground that the application on which it was passed was time-barred*——*Inherent powers not to be exercised to extend definite periods of limitation*——*no inherent power to set aside* ex parte *decree.*

An *ex parte* decree cannot be set aside in exercise of the court's inherent powers under section 151 of the Code of Civil Procedure, 1908.

Neelaveni v. *Narayan Reddi* (1), followed.

Where a definite period of limitation has been provided by law within which action must be taken a court is not entitled to extend such period by purporting to act under section 151.

An *ex parte* final decree cannot be set aside under Order IX, rule 13, on the ground that the application for the final decree was barred by time.

The facts of the case material to this report were as follows :—

The petitioner obtained a preliminary decree on a mortgage executed by Ramlochan Mahton and others

* Civil Revision No. 366 of 1921 against an order of J. A. Sweeney, Esq., District Judge of Gaya, dated the 4th July, 1921, reversing an order of the Subordinate Judge of Gaya, dated the 4th December, 1920.

(1) (1920) I. L. R. 43 Mad. 94.