

APPELLATE CIVIL.

Before Mr. Justice Mosely.

1940

MAUNG SHWE THIN *v.* MAUNG THA OK.*

June 4.

Fishery revenue, arrears of—Mode of recovery—Attachment and sale of land—Resumption of land illegal—Civil Court's jurisdiction—Fisheries Act, s. 27—Upper Burma Land and Revenue Regulation, ss. 37 (c), 41, 53 (2) (xii).

Arrears of fishery revenue may be recovered as if they were arrears of revenue (not land revenue). The provisions of s. 41 of the Upper Burma Land and Revenue Regulation must be observed under which an attachment and sale of land of the defaulter are necessary steps for the recovery of revenue. If instead the revenue officer resumes the land and allows another person to have it, he acts without jurisdiction and a civil Court has jurisdiction to entertain a suit at the instance of the aggrieved party. A civil Court's jurisdiction is barred if there had been any proper process for the recovery of arrears of revenue, which was not the case here.

Resumption of land is only allowed by the rules in the case of arrears of land revenue itself, and only in the case of state land.

Burma Oil Co., Ltd. v. Baijnath Singh (1917-20) 3 U.B.R. 212; *Sonilal v. Delawar* (1914-16) 2 U.B.R. 151, referred to.

Ko Cheik v. Secretary of State for India, [1939] Ran. 275, distinguished.

G. N. Banerjee for the appellant.

E Maung (1) for the respondent.

MOSELY, J.—The plaintiff-respondent Maung Tha Ok was surety for the payment of fishery revenue on behalf of a fishery lessee in Upper Burma. That lessee failed to pay the revenue and Maung Tha Ok's land was sold. Maung Tha Ok claimed that it was *bobabaing* land, the defendant that it was state land. The trial Court did not come to any finding on the point. Under section 27 of the Fisheries Act arrears of fishery revenue may be recovered as if they were arrears of revenue (not land revenue), and the term "revenue" is defined in section 37 (c) of the Regulation as including revenue payable on account of fisheries. The surety's land was resumed though notice to pay

* Civil 2nd Appeal No. 42 of 1940 from the judgment of the Assistant District Court of Minbu in Civil Appeal No. 15 of 1939.

the revenue was never served on him. The land was taken over or resumed by Government and the defendant-appellant Maung Shwe Thin was allowed to take it on payment of the arrears Rs. 70-8-0. There was, however, no attachment or sale of the land within the meaning of section 41 which gives the processes by which arrears may be recovered.

Resumption is only allowed by the rules in the case of arrears of land revenue itself, and only in the case of state land, *vide* rule 174 framed under section 41 (1) (d) : (Rule 34 quoted by the Court of First Appeal has been cancelled).

The two lower Courts were of the opinion that a civil Court had jurisdiction and that the plaintiff's claim was bound to succeed. The case quoted by the lower appellate Court *Maung Po Cho v. Maung San Bwin* (1) is irrelevant. That concerns the jurisdiction of the civil Courts to entertain disputes between private persons as to the right to occupy land over which no landholders rights have been acquired under the Lower Burma Land and Revenue Act. There are similar decisions in Upper Burma as to the effect of section 53 (2) (ii) of the Regulation,—*Sonilal Sheoshanka v. Delawar* (2) and *Burma Oil Company, Limited v Baijnath Singh* (3).

The only contention raised in this appeal is that the suit was barred by the provisions of section 53 (2) (xii) of the Regulation which says that a civil Court shall not exercise jurisdiction over "any claim connected with, or arising out of, the collection of revenue, or the enforcement of any process for the recovery of an arrear of revenue or any sum recoverable as such an arrear." *Ko Cheik v. Secretary of State for India* (4) is

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(1) (1925) I.L.R. 3 Ran. 171.

(2) (1914-16) 2 U.B.R. 151.

(3) (1917-20) 3 U.B.R. 212.

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quoted in this connection. That, however was a case where there were properly instituted recovery proceedings for the recovery of *thathameda* tax, and the claim was in respect of the property sold in connection with the collection of revenue.

The question in the present case is whether the plaintiff's claim is connected with, or arising out of, a collection of revenue, or the enforcement of any process for the recovery of an arrear of revenue. The words "connected with or arising out of the collection of revenue" must be construed reasonably. Their meaning cannot be extended so as to include any consequences, however indirect, or however unjustified by law, of action taken to collect revenue. I do not think it can be said that the plaintiff's claim in this suit was connected with or arose out of a collection of revenue merely because, when the revenue was not collected, the revenue authorities proceeded without jurisdiction to resume the land. In my opinion the words "collection of revenue" mean collection by payment in the ordinary course, or recovery of arrears in the ways allowed by section 41. No doubt, if the revenue authorities had proceeded to enforce any process (process is defined in section 41) for the recovery of arrears of revenue the jurisdiction of a civil Court would be barred; but there was no attachment and sale here, and what was done was not done in enforcement of any process for the recovery of revenue as defined in the Act. To hold otherwise would mean that if the revenue authorities did anything they pleased with total absence of jurisdiction under the Act in order to collect revenue the jurisdiction of civil Courts would be barred.

For these reasons I consider that the orders of the lower Courts were correct and this appeal is dismissed with costs, advocate's fee two gold mohurs.