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of Civil Procedure, namely, the value of the property to be specified in the sale proclamation, the judgment-debtor asserting that the amount as mentioned in that paper was grossly inadequate. The Munsif did not go into any evidence on this matter upon the ground that, in his view, the sale might be hereafter set aside if the property be sold at an inadequate price, the result being that the sale proclamation, as it was originally issued, was maintained.

Against this order of the Munsif, the judgment-debtor appealed to the higher Court; and the Subordinate Judge has dismissed the appeal upon the simple ground that no appeal lay against the order of the Munsif.

We think that in this respect the Court below was in error, because the order made by the Munsif was an order between the parties as falling under section 244, Civil Procedure Code; and, if so, it is obvious that an appeal did lie to the higher Court. We accordingly set aside the order of the Subordinate Judge, and send back the record to him for retrial of the appeal preferred to him. The costs will abide the result.

Appeal allowed: case remanded.

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30 C. 619 (=7 C. W. N. 433.)

[619] APPELLATE CIVIL.

MATANGINI DEBI *v.* GIRISH CHUNDER CHONGDAR.*

[6th March, 1903.]

Sale in execution of Certificate—Public Demands Recovery Act (Bengal Act I of 1895) ss. 15, 19, 32, 33—"Final," meaning of—Appeal—Review—Revision—Power of revision by Commissioner.

A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act is maintainable in the Civil Court.

Ram Taruck Hazra v. *Dilwar Ali* (1) referred to.

An order made by a Certificate Officer under section 19 of Bengal Act I of 1895, is final only in the sense that it shall not be open to appeal as provided by s. 32 of that Act, but not in the sense that it shall not be open to review or revision by the Commissioner under s. 33 of the same Act.

Nasiruddin Khan v. *Indronarayan Chowdhry* (2), *Badaricharry* v. *Ram Chandra Gopal Savant* (3), and *Ramsing* v. *Babu Kisansing* (4), relied upon

[Appr. 2 C. L. J. 306; Expl. 34 C. 677=11 C. W. N. 803=6 C. L. J. 34.]

SECOND APPEAL by the plaintiffs, Matangini Debi and others.

An *ayma* mehal bearing towji No. 1274 in the Burdwan Collectorate was sold for arrears of cess under s. 21 of Bengal Act I of 1895 on the 31st January 1896. Thereupon the plaintiff No. 3 applied to set aside the sale on making the necessary deposit under s. 19 of that Act. He alleged that under the terms of a permanent lease which the plaintiffs held of the shares of the defendants Nos. 2 to 6 in the property sold as well as of other properties belonging to the said defendants, they (the plaintiffs) were liable to pay damages in case of default in payment of revenue and cesses on account of the towji that might fall due by them, and that, in the circumstances, he was competent under s. 19 of Bengal Act I of 1895 to [620] make the necessary deposit and to have the sale

* Appeal from Appellate Decree No. 556 of 1900, against the decree of B. L. Gupta, District Judge of Burdwan, dated Dec. 22, 1899, reversing the decree of Hara Kumar Dass, Munsif of Burdwan, dated Aug. 31, 1898.

(1) (1901) I. L. R. 29 Cal. 73.
(2) (1866) B. L. R. Sup. Vol 367; 5 W. R. 93.
(3) (1893) I. L. R. 19 Bom. 113.
(4) (1893) I. L. R. 19 Bom. 116.

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set aside. The deposit was made and the sale set aside by the Certificate Officer on the 14th February 1896. The auction-purchaser then appeared and objected to the cancellation of the sale on the ground that the plaintiff No. 3 was not a party entitled under s. 19 of the Act to make the deposit and apply for the cancellation of the sale. Thereupon the Certificate Officer, after hearing both the sides, held that he had the power to review his order dated the 14th February 1896, and being of opinion that the applicant, plaintiff No. 3, was not a person who claimed *through* the judgment-debtor, and that his leasehold interest was not disturbed by the sale, set aside the aforesaid order and confirmed the sale on the 20th March 1896. On appeal the Collector restored the first order of the Certificate Officer cancelling the sale. Thereupon the auction-purchaser moved the Commissioner to revise the order of the Collector, and the Commissioner held that the Collector had no jurisdiction to hear the appeal, and restoring the order of the Certificate Officer passed on review, confirmed the sale.

The present suit was instituted by the plaintiffs for a declaration that they were entitled to make deposit under s. 19 of Bengal Act I of 1895, and that the orders of the Certificate Officer dated the 20th March 1896 and of the Commissioner affirming the same on revision were *ultra vires*. There was also a prayer for the cancellation of the sale.

The defendant No. 1, who was the auction-purchaser, alone appeared and took various objections in bar of the suit.

The Munsif held that the plaintiffs had sufficient interest in the sale to entitle them to make a deposit under section 19 of the Act; that the Certificate Officer had no power to review his first order cancelling the sale, and that all proceedings of the revenue authorities subsequent to that order were *ultra vires*. He accordingly decreed the suit and directed the sale to be set aside as illegal.

On appeal the District Judge held that no suit was maintainable to set aside a sale in execution of a certificate where it was found that there was an unsatisfied arrear of cesses at the time of the sale. He relied upon the case of *Troyluckho Nath* [621] *Mozumdar* v. *Pahar Khan* (1) as a direct authority on the point. He also held that there was no reason why the Certificate Officer could not review his own *ex parte* order or why the extensive revisional powers conferred on the Commissioner by section 33 of the Act were taken away in this particular case. The District Judge accordingly decreed the appeal and dismissed the suit.

Dr. *Rashbehary Ghose* and Babu *Nalini Ranjan Chatterjee* for the appellants.

The *Advocate-General* (Mr. *J. T. Woodroffe*) and Babu *Saroda Charan Mitra* and Babu *Charu Chandra Ghose* for the respondents.

BANERJEE AND HENDERSON, JJ. This appeal arises out of a suit brought by the plaintiffs-appellants for a declaration that they were persons entitled to make a deposit under section 19 of the Public Demands Recovery Act I of 1895 (Bengal Council), and that the order of the Deputy Collector made upon review under that section confirming the sale and the order of the Commissioner under section 33 of that Act confirming the sale were *ultra vires*, and for cancellation of the sale. The defence was that the suit was not maintainable: that the orders complained of were not *ultra vires*, and that the sale should not be

(1) (1896) I. L. R. 23 Cal. 641.

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cancelled. The first Court decreed the plaintiffs' suit. On appeal the Lower Appellate Court reversed that decree and dismissed the suit on two grounds—*first*, that the suit to set aside the sale in execution of a certificate is not maintainable, where, as in this case, it is found that there was an unsatisfied arrear of cesses due at the time of the sale, and, *secondly*, that the orders under section 19 and section 33, which the plaintiffs asked the Court to hold as being *ultra vires*, were really not so.

In second appeal it is contended on behalf of the plaintiffs-appellants that the first ground of the Lower Appellate Court's judgment is wrong, and the case of *Troyluckho Nath Mozumdar* v. *Pahar Khan* (1), in reliance upon which the Lower Appellate Court has held this suit as not maintainable, has been overruled by the Full Bench decision of this Court in the case of *Ram Taruck Hazra* v. *Dilwar Ali* (2); and that the second ground [622] of the judgment is also erroneous, it being argued that the order made by the Certificate Officer to set aside the sale under section 19 of Act I of 1895 was a final order under sub-section 4 of that section, and was neither open to review by the Certificate Officer nor subject to revision by the Commissioner under section 33; and that the subsequent orders interfering with that first order were *ultra vires*, and should be treated as a nullity, and if that is so, the first order setting aside the sale should be held to be the only order in the case, and the sale should be declared by the Court as cancelled.

The contention on behalf of the appellants that the first ground of the Lower Appellate Court's judgment is erroneous is in our opinion correct. The case of *Troyluckho Nath Mozumdar* v. *Pahar Khan* (1), in reliance upon which the Lower Appellate Court has held this suit as not maintainable, has been overruled by the Full Bench decision in the case of *Ram Taruck Hazra* v. *Dilwar Ali* (2).

It has been argued for the respondent that section 15 of the Act I of 1895 was a bar to the civil suit unless it is brought under certain conditions which have not been fulfilled in this case. We do not think that section 15 has any bearing upon this suit. If the contention of the learned vakil for the appellants, that the first order of the Certificate Officer under section 19, setting aside the sale was absolutely final in the sense not only of its not being open to appeal, but of its not being open either to review or revision by the Commissioner under section 33 of the Act, be correct, then all the subsequent orders would be *ultra vires*, and the suit would lie and would not be liable to be dismissed. Was that order really so? That is the question upon which the whole case turns. The contention on behalf of the appellants is that as sub-section 4 of section 19 says any order made by the Certificate Officer under this section shall be *final*, and as there is nothing to indicate that the finality intended by the section is finality so far as regards interference by an Appellate Court is concerned, we should hold that the intention of the Legislature was to make it final in the sense of not being open to appeal or review or [623] revision. It was suggested that as the order contemplated by the section was of a remedial character restoring the property sold to its former owner and compensating the auction-purchaser by awarding him one-tenth of the auction price in addition to the purchase-money, the Legislature might well have intended to make the order absolutely final.

(1) (1896) I. L. R. 23 Cal. 641. (2) (1901) I. L. R. 29 Cal. 73.

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On the other hand, it is contended for the respondent that the finality intended by sub-section 4 of section 19 is only finality so far as interference by an Appellate Court is concerned; that that would not prevent the Certificate Officer from reviewing the order; nor would it prevent the Commissioner under section 33 of the Act from revising it; and it was pointed out that although section 19, sub-section 2, directs the Certificate Officer to set aside the sale on certain conditions, there is nothing to prevent the Certificate Officer from making an order under the section refusing to cancel the sale as he has done in this case, if not in the first instance, but upon review, and that in such cases the reason given for making the order absolutely final cannot hold good.

After considering the arguments on both sides and the authorities cited, we are of opinion that sub-section 4 of section 19 of the Public Demands Recovery Act of 1895 (B. C.), in saying that any order made by the Certificate Officer under the section shall be final, only means and intends that it shall not be open to appeal such as is provided by section 32; and that the intention is not to make the order absolutely final so as to make it not open to review or revision. Although in most cases the order contemplated by section 19 can only have a remedial effect, there may be cases where a Certificate Officer erroneously refuses, after deposit, to cancel a sale where he ought clearly not to do so; and to hold that there is no power which can set him right by revision, would be to hold what the Legislature could never have contemplated, especially when section 33 of the Act, after providing that no appeal shall lie from certain orders, says that the Commissioner may in any case in which he thinks fit revise any order passed by a Certificate Officer or certain other Revenue Officers. The view we take that the words "shall be final" in section 19, sub-section 4, have the qualified meaning indicated above and, not the unqualified signification for which the learned vakil for the [624] appellants contends, is in accordance with that taken in the case of *Nasiruddin Khan* v. *Indronarayan Chowdhry*(1), which had reference to exactly the same words occurring in the Civil Procedure Code of 1859, with regard to an order made upon an application for review of judgment. And the same view has in effect been taken by the Bombay High Court in the case of *Badaricharya* v. *Ramchandra Gopal Savant* (2) and *Ramsing* v. *Babu Kisansing* (3). That being so, and the order in question being in our opinion open to revision by the Commissioner under section 33 of the Public Demands Recovery Act, and the Commissioner having under that section affirmed the sale, it becomes unnecessary to consider the further question whether it was open to a Certificate Officer himself to review the order when no power of review is conferred on him by the Act—a question upon which the case of *Lala Prayag Lal* v. *Jai Narayan Singh* (4) may lend some support to the appellants' contention.

The result is that the appeal fails and must be dismissed with costs.

Appeal dismissed.

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(1) (1866) B. L. R. Sup. Vol 367; 5 W. R. 93.
(2) (1893) I. L. R. 19 Bom. 113.
(3) (1893) I. L. R. 19 Bom. 116.
(4) (1895) I. L. R. 22 Cal. 419.