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CRIMINAL  
REVISION.  
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32 C. 948=9  
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longer necessary, the District Magistrate may cancel it. In other words, while a District Magistrate may in case of an executed bond hold, for sufficient reasons, that it is no longer necessary and accordingly cancel it, he has no power to declare that it was never necessary. In the former case the order of the subordinate Court is not touched, except so far as the District Magistrate may consider that the circumstances existing subsequent to such order require that it should cease to be given effect to. In the latter case the District Magistrate reviews and differs from an authority over which in the particular matter in question he has been given no appellate or revisional control other than that conferred by section 438. We are of opinion, therefore, that the District Magistrate's order was without jurisdiction. We accordingly set it aside and restore that of the Deputy Magistrate.

*Rule made absolute.*

32 C. 953 (=3 C. L. J. 46.)

[953] APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr Justice Mitra.*

BEJOY CHAND MAHATAP v. ATULYA CHARAN BOSE.\*  
[12th April, 1905.]

*Sale for arrears of rent—Setting aside sale—Irregularity—Bengal Regulation VIII of 1819, ss. 8, 10—Publication of notice of sale—Form of notice—Order as to lots to be sold.*

A sale under Regulation VIII of 1819 cannot stand, if the provisions of the Regulation are not strictly complied with.

The sticking up of certified copies instead of the original petition and notice as required by s. 8 of the Regulation is a material irregularity.

A notice not containing any order as to the lots to be sold is not in proper form; where the notice was stuck up only until the 14th May and the sale actually took place on the 15th, held that this was in contravention of s. 10 of the Regulation.

S. 10 would seem to imply that the notice is to remain stuck up until it should be taken down at the time of the sale.

When the notice and the petition were stuck up every day at 10 A.M., and taken down at 5 P.M., and they were not stuck up at all on Sundays:—

*Held that the procedure was not justified by the Regulation.*

[Expl. and Dist. 11 C. W. N. 729; Ref. 19 C. W. N. 963=27 I. C. 825; 13 C. L. J. 404 =10 I. C. 50=16 C. W. N. 805; Fol. 47 Cal. 337=54 I. C. 736=30 C. L. J. 433.]

APPEAL by the defendant No. 1, Maharaja Bejoy Chand Mahatap Bahadur.

A *patni* taluk held under the defendant No. 1 was owned by the plaintiff Atulya Charan Bose and the defendants Nos. 3 to 10. The plaintiff alleged that the *patni* rent for the year 1307 having fallen into arrear on account of the fraudulent conduct of the defendants Nos. 3 to 7, the *patni* was sold under Regulation VIII of 1819 on the 1st Jaista 1308, and that it was purchased by the defendants Nos. 3 to 7 in the *benami* of defendant No. 2. He further alleged that the notices required to be served under the Regulation had not been served, and he brought the

\* Appeal from Original Decree No. 102 of 1903 against the decree of Kalidhan Chatterjee, Subordinate Judge of Hooghly, dated the 20th of December, 1902.

present suit praying for the setting aside of the sale and for recovery of possession with mesne profits of an eight annas share of the taluk, [954] or in the alternative for a decree directing the defendants Nos. 2 to 7 to reconvey to him an eight annas share of the taluk or to pay damages.

The defendant No. 1 pleaded that there was no irregularity in the sale and that the sale could not be set aside. The defendant No. 2 denied that he was a *benamdar* and pleaded that the sale was good and that he had purchased the taluk on his own account and that the plaintiff was not entitled to any of the reliefs claimed. The defendants Nos. 3 to 5 denied having made the purchase and pleaded that the defendant No. 2 was the real purchaser; they pleaded that the default was due to laches on the part of the plaintiff and denied the allegations of fraud made against them by the plaintiff.

The Subordinate Judge, who tried the suit, held that the requirements of Regulation VIII of 1819 had not been complied with; he accordingly set aside the sale.

The defendant No. 1 appealed to the High Court.

Babu *Basanta Coomar Bose* and Babu *Sorashi Charan Mitra* for the appellants.

Babu *Nilmadhab Bose*, Babu *Pramatha Nath Sen*, Babu *Sarat Chandra Basak* and Babu *Joy Gopal Ghose*, for the respondent.

MACLEAN, C. J. This is a suit to set aside the sale of a *patni* tenure held under the provisions of Regulation VIII of 1819. The plaintiff's case was that the provisions of the Regulation had not been complied with, that there had been several irregularities in connection with the publication of the petition and the notice; and that, consequently, by reason of those irregularities, the sale could not stand.

If we are with the plaintiff in the view that there were these irregularities,—and the Court below is with him in this matter,—then it would not be successfully disputed that the sale could not stand, and it would be unnecessary to go into the other points, which have been raised. It seems to me, upon the evidence, that the view taken by the Court below as to the publication and service in the Collector's cutcherry is correct, and that in connection with that publication and service, the evidence establishes that [955] there were important irregularities. I will confine myself to the case of the service at the Collector's cutcherry. The second clause of section 8 of Regulation VIII of 1819 lays down specifically what is to be done, and it has been decided both by the Privy Council and by this Court that if the provisions of that Regulation are not strictly complied with, the sale cannot stand. It is clear from that clause that, on the 1st day of Bysack, the zamindar should "present a petition to the Collector containing a specification of any balances that may be due to him on account of the expired year, from all or any taluqdars or other holders of an interest of the nature described in the preceding clause of the section, and that the same," that is the petition, should then "be stuck up in some conspicuous part of the cutcherry with a notice that, if the amount claimed be not paid before the 1st of Jaith following, the tenures of the defaulters will on that day be sold by public auction in liquidation." Now in this case the original petition, as far as I can make out, does not seem to have been stuck up at all. What seems to have been stuck up was Exhibit C, which purports to have been a certified copy of the petition. At any rate, there is no proof that the original petition was ever stuck up. Our conclusion is

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that it was not. So also as to the notice. Having regard to the provisions of the second clause, it is the original petition and the original notice, which ought to be stuck up, for section 10 of the Regulation says that, at the time of the sale, "the notice previously stuck up in the cutcherry shall be taken down"—apparently meaning the notice stuck up in some conspicuous part of the cutcherry as provided in clause 2 of section 8, which, I think, means the notice itself, and not a copy of it. This, then, was a material irregularity.

There was another irregularity. The notice was stuck up only until the 14th May, although the sale did not, in fact, take place until the 15th. This was in contravention of section 10.

Again, if we look at section 10, we find it provided that when the notice previously stuck up shall be taken down, "the lots shall be called up successively in the order in which they may be found in that notice." The notice, apparently, contained no such order as to the lots and was consequently not in the proper form.

[956] Further, the evidence in case shows that the petition and the notice were stuck up every day at 10 A.M. and taken down at 5 P.M., and that they were not stuck up at all on Sundays. There is nothing in the Regulation to justify this procedure: on the contrary section 10 would seem to imply that the notice is to remain stuck up, until it should be taken down at the time of the sale.

It is unnecessary, in the view we hold, to go into the question whether there was sufficient publication at the cutcherry of the zemindar, or upon the land of the defaulter, though this is very doubtful upon the evidence. The irregularities to which we have referred are sufficient to vitiate the sale; for the provisions of the Regulation appear to have been seriously disregarded.

A preliminary objection was taken by the respondent to the effect that, as the auction-purchaser and the other co-sharers were not made parties to this appeal, the appeal could not proceed. It is unnecessary to go into that question as we have dealt with the case on the merits.

The appeal must be dismissed with costs.

MITRA, J. I am of the same opinion.

*Appeal dismissed.*

32 C. 957 (= 9 C. W. N. 721 = 1 C. L. J. 476.)

[957] FULL BENCH.

*Before Sir Francis W. Maclean, Kt., K.C.I.E., Chief Justice, Mr. Justice Ghose, Mr. Justice Rampini, Mr. Justice Sale and Mr. Justice Geidt.*

KALI MANDAL v. RAMSARBASWA CHAKRAVARTI.\*

[20th May, 1905.]

*Appeal—Acts—Bengal Tenancy Act (VIII of 1885) s. 153—Appeal from order.*

*Held by the Full Bench, Rampini, J., dissenting:—*

An order setting aside or declining to set aside a sale in execution of a decree for rent, the decree-holder being the purchaser, falls within the proviso to s. 153 of the Bengal Tenancy Act, and is appealable, although there could be no appeal from the decree in the suit on account of the prohibition contained in that section.

[Fol. 15 I. C. 436 = 16 C. L. J. 542 = 17 C. W. N. 84; Ref. 18 C. W. N. 1266 = 20 C. L. J. 341 = 27 I. C. 234; 19 C. W. N. 953 = 22 C. L. J. 244 = 29 I. C. 308; 49 I. C. 465.]

\* Reference to Full Bench in Civil Rule No. 3626 of 1904.