that the appeal ought to be allowed, the judgment of the Chief Court of Lower Burma reversed with costs, and the judgment of the Judge of the Court at Moulmein restored.

The respondent will pay the costs of this appeal.

Appeal allowed.

Solicitors for the appellant: *Bramall & White.*
Solicitors for the respondent: *Richardson & Co.*

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PRIVY COUNCIL.

32 C. 219=4 L. B. R. 172 =8 Sar. 743 =32 I. A. 72.

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32 C. 229 (=9 C. W. N. 300.)

[229] APPELLATE CIVIL.

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

HAMID HOSSEIN *v.* MUKHDUM REZA.*

[25th August, 1904.]

Revenue Sale—Revenue sent by money-oder—Estate, wrong description of—Mistake—Arrear of Revenue—Revenue Sale Law (Act XI of 1859) ss. 8, 20, 33—Land Revenue Rules in the Land Revenue and Cesses in Bengal Rule 29—Jurisdiction—Board's Towji Manual.

Where the actual amount of revenue remitted by money-order reached the Collectorate in time, but the remitter made a mistake in the towji number and the name of the registered proprietor, but was right as to the name of the estate and the amount of Revenue payable in respect thereof:—

Held that it was the duty of the Officers of the Collectorate to do what Rule 29 of the Land Revenue Rules prescribes, and not to put up the property to sale which, if held would be without jurisdiction and ought to be set aside.

Bal Kishen Das v. *Simpson* (1) referred to.

SECOND APPEAL by the plaintiff, Syed Shah Hamid Hossein Sajjada-nashin.

This appeal arose out of an action brought by the plaintiff to set aside a revenue sale held under Act XI of 1859. It appeared that there were two estates in the District of Shahabad, one named Narsingha, the towji number of which was 2894, the registered owner's name was Golam Najaf and the revenue payable was Rs. 24-4; and the other Naughar, towji number of which was 2897, the registered owners' names were Ramsaran and Latchmi, and the revenue payable was Rs. 16.

On the 26th March 1898, the plaintiff sent a revenue money-order for Rs. 24-4, payable ostensibly to the credit of Narsingha No. 2897. The proprietor's name was given as Haidar Ali [230] Sajjada-nashin. This remittance reached the Collectorate on the *kist* day and was credited to the account of Naughar 2897. The estate Narsingha being thus still in arrears was sold.

The plaintiff's allegation was that there was no arrear at all; and that the property was wrongly sold at an inadequate price on account of various irregularities. The plaintiff further alleged that he had preferred an appeal to the Commissioner, but his appeal had been dismissed.

The defence chiefly was that there was no irregularity in the procedure, and that the revenue being in arrear the sale of the estate could not be set aside.

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* Appeal from Appellate Decree, No. 1507 of 1902, against the decree of H. R. H. Coxe, District Judge of Shahabad, dated April 11, 1902, affirming the decree of Lal Behari Dey, Offg. Subordinate Judge of Arrah, dated June 17, 1901.

(1) (1898) I. L. R. 25 Cal. 883; L. R. 25 I. A. 151.

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The Court of first instance dismissed the plaintiff's suit holding that, although the plaintiff had placed in the Collector's hand money sufficient to pay the revenue, yet the *kist* of that particular estate had remained unpaid in consequence of the mistake made by the plaintiff.

On appeal, the District Judge upheld the decision of the first Court. The plaintiff then appealed to the High Court.

Babu *Saligram Singh* (Moulvi *Abdul Jawad* with him), for the appellant. The exact amount of the Government revenue and the name of the estate in respect of which the revenue was remitted were correctly stated in the revenue money-order. It was, therefore, wrong on the part of the Collectorate *amlas* to have credited the amount sent to another estate. It was clear on the face of the revenue money-order that the towji number was incorrectly stated therein. Under rule 29 of the Board's Towji Manual, the Collectorate *amlas* were bound to acknowledge the revenue money-order with a remark thereon that there was a mistake in the particulars given in the money-order. The appellant having sent the full amount of Government revenue, which was received in the Collectorate, the present case is governed by the principle laid down in the case of *Balkishan Das* v. *Simpson* (1).

Babu *Umakali Mookerji* (Babu *Govind Chandra Dey Roy* with him), for the respondent. The plaintiff must suffer for his own mistake and negligence in not giving the correct towji number in **[231]** the revenue money-order. The Collectorate *amlas* were perfectly justified in crediting the amount sent, to the estate Naugher the towji number of which was given in the money-order. The third paragraph of the footnote in the printed revenue money-order form clearly states that "If full particulars are not correctly given in the *chalans* mistake may occur for the consequence of which the remitter will alone be responsible." That being the case, the sale was rightly held.

MACLEAN, C. J. This is a suit to set aside a revenue sale under Act XI of 1859, and it comes before us on second appeal. The question we have to decide is whether, upon the facts found by the District Judge, the revenue can properly be said to have been in arrears so as to justify the sale. The last day for paying in the revenue was the 28th March 1898, and the money was remitted by the plaintiff by a money-order on the 26th March and it reached the Collectorate in due time on the 28th.

It appears that in this District there are two estates, one called Narsingha, Towji No. 2894, the registered owner being Golam Najaf and the revenue being Rs. 24-4 as.: the other is called estate Naugher, Towji No. 2897 the registered owners being Ram Saran Singh and others, and the revenue being Rs. 16. The plaintiff sent a revenue money order for Rs. 24-4 as. but he gave the Towji number as 2897 and the proprietor's name as Haidar Ali Sajjadah Nashin, who was the successor in title of the registered owner of estate Narsingha, namely, Golam Najaf. The Collector credited Rs. 24-4 as the money so put in, to the account of estate Naughar No. 2897. It is clear, whether it was the fault of the plaintiff or it was the fault of the clerks in the Collectorate, that the revenue was credited to a wrong estate, for although there is an estate called Narsingha Towji No. 2894 and there is another estate called Naughar Towji No. 2897, there is no estate known as Narsingha Towji No. 2897. The plaintiff the remitter, made two mistakes, a mistake in the Towji number and a mistake in the name of the registered owner,

(1) (1898) I. L. R. 25 Cal. 833; L. R. 25 I. A. 151.

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though he was right as to the name of the estate and as to the amount of the revenue payable in respect of that estate. It is clear [232] that, on the 28th March, there was in the hands of the Collector the amount which was due for arrears of revenue in respect of estate Narsingha, namely, Rs. 24-4 as. It is equally clear that any body reading the revenue money-order would see that there was an error upon the face of it, the error being that the wrong Towji number was given. In these circumstances it was, we think, clearly the duty of the officers of the Collectorate, under rule 29 of the Land Revenue Rules in the Land Revenue and Cesses in Bengal, to have done what that rule prescribes which would have invited the attention of the plaintiff, to the mistake which he had made in the towji number, and would have given him an opportunity of rectifying that mistake. But the officers did nothing of the sort. They simply sent back a receipt which did not refer to the mistake and which, to some extent, may be regarded as having lulled the plaintiff into a sense of false security; I mean, upon receiving that receipt, he would think that the matter was all right and that the payment was properly made.

The sale took place on the 28th June 1898, on the footing that there was an arrear of revenue due, and on the 23rd June 1899 an appeal to the Commissioner was dismissed. This suit was then instituted on the 20th January 1900; the question is whether in these circumstances, it can fairly be said as against the plaintiff that there was an arrear of revenue on the sunset day, that is, on the 28th March 1898. That the plaintiff fully intended to pay the revenue there can be no doubt, and there can be no doubt that he thought that he had paid it. As I have said, the money due for revenue was certainly then in the coffers of the Collectorate—the money actually due for arrears of revenue of the particular estate Narsingha, and, if the officers of the Collectorate had done what the rules prescribed, there is no doubt whatever that this sum would have been duly and properly credited to that estate and no sale could have been properly effected. In these circumstances, it seems difficult to say that there was an arrear which would justify the sale. The facts were perhaps rather stronger in the case in the Privy Council of *Balkishen Das* v. *Simpson* (1) but the principle underlying that case appears to us [233] to apply to the present. In that case the Collector made a mistake in debiting a wrong amount to the estate owned by the then plaintiff and it was held in effect that, as the true amount had reached the Collectorate, it could not be said that there was any arrear. So here, the money had reached the Collectorate in time and though no doubt the plaintiff made a mistake in mentioning a wrong Towji number, if the Collectorate officers had complied with the rules, the mistake would have been rectified. The defendant relies upon the third paragraph endorsed on the money-order which says in effect that the remitter is to be liable for any mistake and that the Collectorate is to be guided by the Towji number. I do not think that this endorsement can relieve the Collectorate from doing that which the rules say their officers ought to have done. Rule 29 implies that there may be a mistake on the part of the remitter and the rule is framed so that his attention may be called to the mistake with a view to its rectification. It would be going too far, we think, to hold that the endorsement on the back of the money-order frees the

(1) (1898) I. L. R. 25 Cal. 833; L. R. 25. I. A. 151.

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32 C. 229=9 C. W. N. 306.

Collectorate from the duty imposed upon it by rule 29. The appeal, therefore, must be allowed, the decisions of the lower Courts must be reversed and a decree passed in favour of the plaintiff setting aside the sale with costs in all the Courts.

MITRA J. I concur.

Appeal allowed.

32 C. 234 (=9 C. W. N. 270=1 C. L. J. 283.)

[234] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Geidt.

DULAR KOERI *v.* DWARKANATH MISSER.*

[31st August, 1904].

Hindu Law—Mitakshara, Ch. I, ss. 6, 7; of Ch. II, s. 9; Ch. VI, s. 4—Partition—Father—Son—Mother's share, allotment and enjoyment of—Maintenance.

Under the Mitakshara law when partition of joint family property takes place, during the father's lifetime, at the instance of a son the mother of the son is entitled to a share equal to that of her husband and her son; and she is entitled to have the share separately allotted, and to enjoy that share when so allotted.

Suraj Bunsi Koer v. *Sheo Persad Singh* (1), *Pursid Narain Singh* v. *Honooman Sahay* (2), *Sumrun Thakoor* v *Chunder Mun Misser* (3), and *Deendyal Lal* v. *Jugdeep Narain Singh* (4) relied upon.

Quære: Whether a share so allotted to a mother is in lieu of her maintenance.

[Ref: 34 Cal. 971=9 C. W. N. 510 =1 C. L. J. 583.]

SECOND APPEAL by Dular Koeri, the defendant No. 5.

Dwarkanath Misser, the defendant No. 1, is the father of a family governed by the Mitakshara school of Hindu Law, having two wives—Dular Koeri the defendant No. 5, and Maina Koeri the defendant No. 6. By his first wife he has one son, *viz.*, the plaintiff, Brindanath Misser, and by his second wife he has three sons, *viz.*, the defendants Nos. 2 to 4. The plaintiff brought the present suit for the partition of the joint family properties into eight parts and the allotment of one part to him. The mother of the defendant No. 1 was made a defendant in the suit, and it was alleged that under the law the properties should be divided into eight shares, one of which should be allotted to the plaintiff and one to each of the defendants. The suit was resisted, but was decreed by the Subordinate Judge on the 10th March 1885. [235] There was an appeal from this preliminary decree by defendants to the Judicial Commissioner, who affirmed the decree, except as follows: a son having been born to the defendant No. 1 by the second wife during the pendency of the appeal, the share decreed to the plaintiff was reduced to one-ninth. The allotments were made by the Subordinate Judge by the final decree on the 23rd June 1900, one share each being allotted to the plaintiff and his mother, the defendant No. 5, the rest being allotted to the other defendants. The latter appealed to the Judicial Commissioner

* Appeal from Appellate Decree No. 717 of 1901, against the decree of F. B. Taylor, Judicial Commissioner of Chota Nagpore, dated Jan. 21, 1901, modifying the decree of Nepal Chandra Bose, Subordinate Judge of Ranchi, dated March 26, 1900.

(1) (1879) I. L. R. 5 Cal. 148.
(2) (1880) I. L. R. 5 Cal. 845.
(3) (1881) I. L. R. 8 Cal. 17.
(4) (1877) I. L. R. 3 Cal. 198.