

be put up in some conspicuous part of the Collector's cutcherry another to be stuck up at the sudder cutcherry of the zemindar himself, and a third to be published at the cutcherry or at the principal town or village upon the land of the defaulter. The law futher says that the zemindar shall be exclusively responsible for the due service of these notices. These three distinct notices are imperative, and the reason is plain, for a patnisale affects not simply the patnidars, but all holders of subordinate tenures under the patnidars. In *Mohammed Zahor Ali Khan v. Mussamut Tkakorancee Ruttee Koer* (1), the Privy Council held that a special law must be strictly carried out. A series of decisions of both the late Sudder and the High Court held a strict compliance with this section of Regulation VIII of 1819 to be indispensable to the validity of a sale under this Regulation. See *Sona Bibi v. Lal Chand Chowdhry* (2), *Haranath Gupta v. Jagannath Roy* (3) *Raghab Chandra*

1872

BAIKANTHA
NATH SING
v.
MAHARAJA
DHIRAJ MA-
HATAB CHAND
BAHADUR.

(1) 11 Moo. I. A., see p. 477.

(2) 9 W. R., 242.

(3) *Before Mr. Justice Bayley and Mr. Justice Hobhouse.*

HARANATH GUPTA (ONE OF THE DEFENDANTS) v. JAGANNATH ROY CHOWDHRY AND OTHERS (PLAINTIFFS).*

The 1st February 1869.

Baboo *Ananda Chandra Ghosal* for the appellant.

Baboo *Ashutosh Chatterjee Jagadannand Mookerjee, and Anukul Chandra Mookerjee* for the respondents.

BAYLEY, J.—I am of opinion that this appeal must be dismissed with costs.

The plaintiffs, Jagannath Roy and Brajendra Kumar Roy, held a patni under a minor zemindar, Annada Prasad Roy, whose estate is now under the Court of Wards, and who is a co-defendant with the special appellant in this case.

This patni was sold for arrears of rent on the 14th May 1866, and purchased by one Haranath Gupta. The plaintiffs sued for possession of the tenure by having the sale at auction set aside.

The plaintiffs' case was that the sale was entirely illegal and fraudulent; that no notice was served as required by cl. 2, s. 8, Regulation VIII of 1819

and that the purchaser, Haranath Gupta, was a servant of the zemindar, and a mere *benamidar*.

The defendants pleaded that the sale was good and legal, and should be upheld.

The first Court held that the notice was duly served, and that the plaintiffs were fully aware of the impending sale. It therefore dismissed the plaintiffs' case.

The plaintiffs appealed to the lower Appellate Court, and urged that, in fact, no legal notice was ever served upon them.

I. L. R.
1 Cal. 176.

* Special Appeal, No. 2020 of 1868, from a decree of the Principal Sudder Ameen of Tippera, dated 19th May 1868, reversing a decree of the Moonsiff of that district, dated 31st August 1867.

1872

Banerjee v. Brajanath Kundu (1). and *Lootf-o-nissa Begum v. Kowur Ram Chunder* (2) decided by the late Sudder Court.

BAIKANTHA
NATH SINGH
v.
MAHARAJA
DHIRAJ MA-
HATAB CHAND
BAHADUR.

The lower Appellate Court reversed the decree of the first Court, and ordered the sale to be set aside on the ground of the notice not having been duly served.

The defendant, Haranath Gupta, is the special appellant before us, and the zemindar also appears in support of the special appeal, but has filed no petition under s. 373, Act VIII of 1859.

The grounds taken in the petition of special appeal are, *firstly*, that the purchaser has wrongly had put on him the burthen of proving that all the formalities necessary to be observed before a sale of this nature had been fulfilled; *secondly*, that supposing there was any irregularity in the notice, that irregularity could not affect the *status* of the defendant (the purchaser); *thirdly*, that the plaintiff was bound to prove his allegation of there being fraud and collusion between the zemindar and the auction-purchaser; *fourthly*, that as long as the plaintiffs did not show that no balance was due, no irregularity in regard to the notice could vitiate the sale; and *lastly* that by the evidence adduced by the defendant purchaser, it had been clearly shown that the notice was duly served, and that the Principal Sudder Ameen was wrong to order the sale to be set aside on the only ground that "the notice was not served 15 days before the sale."

The decision of the lower Appellate Court is, no doubt, very unconnected and obscure; but taking it as a whole, and looking to the judgment with reference to the pleadings and the evidence before the lower Appellate Court, I think that it substantially finds that notice under cl. 2, s. 8, Reg. VIII of 1819, was not duly served, and therefore, in the terms of that law, the tenure could not be properly brought to sale for its arrears of rent.

In the first place, I think that the lower Appellate Court disbelieves the evidence of the peon as to the service of notice, and it does so because the peon deposed to the notice being served in Baisakh, whereas some witnesses who came forward to support the peon's evidence stated that the notice was served in Chaitra.

The defendant purchaser filed a *sûrathâl* (report of the facts of a transaction) purporting to have been given by certain persons of the village on the 13th Baisakh, but the witnesses to the *sûrathâl* on being examined generally denied that there had been any such *sûrathâl* at all. The lower Appellate Court, upon these two (as it finds) untrustworthy and irreconcilable statements, comes, I think, to a general conclusion of facts (though it is true after a good deal of loose and rambling argument); that really neither the notice, nor the *sûrathâl* is proved, and that there was no evidence whatever of any notice of sale within 15 days from the 1st Baisakh as required by cl. 2, s. 8, Regulation VIII of 1819.

It has been pressed on us that a notice under cl. 2, s. 8, Regulation VIII of 1819, is not an essential part of the preliminaries required by the former portion of the section as far as regards the validity of a sale, and the case of *Sona Bibee v. Lall Chand Choudhry* (a) has been cited in support of this argument.

In my opinion, looking to the terms of s. 8, it is impossible to say that it was not a distinct and an obvious object of the Legislature to provide a sufficient notice to a defaulter, before a sale took place of his tenure; and I think that the law considered 15 days' time (but not

(1) *Post*, 91.

(2) S. D. D. for 1849, 371.

Mr. Money.—Technical objections ought not to be allowed to defeat the object of the Regulation. See *Sona Bibi v.* 1872

less) to be a sufficient period for giving such default notice of the intended sale, and that without such notice no sale could be a sale duly held under that law. Again, the decision of this Court cited above does not seem to me to apply to this case at all, because in that case it was found as a fact that the notice was duly served, and that the mere absence of a *súráthál* would not, under the circumstances, vitiate the sale; but here on my mind, the lower Appellate Court finds as a fact that no notice whatever was duly served. It is necessary to observe that the defendant himself filed the *súráthal* as evidence on his own behalf, and now comes and argues before us that, the provisions of s. 8, Regulation VIII of 1818, are not required in their entirety (including the *súráthal*) to be carried out.

In regard to the objection in the petition of special appeal that no irregularity vitiates a sale, so long as the defaulter does not show that there was any balanced due, the pleader for the appellant does not press the point, and it is unnecessary therefore to make any further remark on it.

The special appeal is dismissed with costs.

HOBHOUSE, J.—I agree in dismissing this appeal with costs.

The pleaders for the special appellant admit that, if we should hold that, as a matter of fact, the lower Appellate Court has found that notice was not served on the patnidar at any time, then they have no ground for special appeal, and the pleaders only took up the second point noticed by Mr. Justice Bayley, on the supposition that the Court might be with them on the first point. On considering carefully the judgment of the lower Appellate Court, I quite con-

cur with Mr. Justice Bayley that the Court has substantially found that there was no proof of any notice at all having been served upon the plaintiffs, the patnidars.

This being so, the first objection taken in appeal on behalf of the special appellant falls to the ground, and on the second point the objection falls of itself.

(1) Before Mr. Justice Loch and Mr. Justice Mitter.

RAGHAB CHANDRA BANERJEE
AND OTHERS (PLAINTIFFS) v. BRAJANATH KUNDU CHOWDHRY AND OTHERS (DEFENDANTS).*

The 2nd December 1870.

Baboo Hem Chandra Banerjee, Bipradas Mookerjee, and Iswar Chandra Chuckerbutty for the appellants.

Baboo Kali Prasanna Dutt, Mohini Mohin Roy, and Aubinash Chandra Banerjee for the respondents.

The judgment of the Court was delivered by.

LOCH, J.—The present suit is for setting aside the sale of a patni and for the recovery of possession of the plaintiff's share in the said patni.

The objections taken by the plaintiff to the sale are that it has been informally made, and that the zemindar, when asking the Collector to bring the property to sale, should have recognized all the patnidars, and that the sale had been brought about by collusion between the zemindar and some of the co-sharers of the patni.

The lower Court have found that the sale was properly conducted by the zemindar, and there was no proof whatever of the collusion, and so dismissed the suit.

* Special Appeal, No. 1260 of 1870, from a decree of the Subordinate Judge of Nuddea, dated the 30th March 1870, affirming a decree of the Sudder Moonsiff of that district, dated the 31st December 1868.

BAIKANTHA
NATH SING
v.
MAHARAJA
DHIRAJ MA-
HATAB CHAND
BAHADUR.