

[APPELLATE CIVIL.]

Before Mr. Justice Kemp and Mr. Justice Glover.

BAIKANTHA NATH SING AND OTHERS (PLAINTIFFS) *v.* MAHARAJA
DHIRAJ MAHATAB CHAND BAHADUR, ZEMINDAR, AND OTHERS.
(DEFENDANTS.)*

*Patni Estate, Sale of, for Arrears of Rent—Reg. VIII of 1819: s. 8, cl. 2,
Effect of Non-compliance with the Provisions of—Suit to set aside the Sale.*

1872
March 8.

I. L. R.
1 Cal 175
& 360
and
2 Cal 314.

It is essential to the validity of a sale held under Regulation VIII of 1819, of a patni estate for arrears of rent, that the notices of sale described in cl. 2, s. 8 of the Regulation should have been all duly and regularly published as therein directed.

THE plaintiffs held a patni talook named Ichapore, under the Maharaja of Burdwan, which stood in the name of their grandfather in the Maharaja's *tauji* (revenue or rent account showing under the name of each payer of revenue or rent, the total amount due, the amount paid, and the balance due.) The Maharaja of Burdwan instituted a suit for arrears of rent due on account of this patni mehal for the year 1276 B. S. (1869-70), in the Collector's Court at Hooghly, under Regulation VIII of 1819; and on the 14th May 1870, the patni estate was sold for such arrears, and purchased by Ram Kumar Mitter and Dwarkanath Banerjee, defendants. The plaintiffs objected to the sale before the Collector, but unsuccessfully. The present suit was brought by them in the Civil Court against the Maharaja and the auction-purchasers for a declaration that the sale was illegal, on the grounds that the notices of sale, as described in Regulation VIII of 1819, had not been duly published; that the plaintiffs were wholly ignorant of the proceedings; and that the property had been sold for a price considerably below its proper value; and also for possession. The plaintiffs alleged that the

* Special Appeal, No. 576 of 1871. from a decree of the Judge of Hooghly, dated the 24th February 1871, reversing a decree of the Second Subordinate Judge of that district, dated the 22nd September 1870.

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Maharaja's agents had acted fraudulently in the publication of the notices. They also claimed damages.

The defence of the Maharaja was that the notices of sale had been duly published, and that there was no fraud on the part of his agents.

The defence of the auction-purchasers was the same as that of the Maharaja, with the addition that, as they were *bonâ fide* purchasers for a valuable consideration, the sale to them was not liable to be disturbed.

The Subordinate Judge held that the receipt of service of notice filed was a forgery, and that no notices had been proved to have been given in the mode prescribed in Regulation VIII of 1819. He gave the plaintiffs a decree for possession, but without damages, which he held they were not entitled to, as they were defaulters in the payment of their rent. Against this decision the purchasers appealed to the District Judge. The Judge concurred with the lower Court in its finding that the receipt of service of notice was not genuine. He came to the conclusion however that the evidence established a personal knowledge of the notice of sale by the plaintiffs. He also held that, though the notices might not have been properly published at the places, and in the manner prescribed in Regulation VIII of 1819, that was not sufficient in subsequent proceedings to reverse a sale, as he found that the plaintiffs had personal knowledge of the day of sale; and he held that the object of the law was fulfilled, and dismissed the plaintiffs' suit.

Mr. Woodroffe (with him Baboos *Kali Mohan Das, Hem Chandra Banerjee*, and *Ram Charan Mitter*) for the appellants.

Baboos *Jagadnand Mookerjee* and *Chandra Madhab Ghose* for the Maharaja of Burdwan.

Mr. Money (with him Baboos *Ramanath Bose* and *Tarak Nath Sen*) for the auction-purchasers.

Mr. Woodroffe.—For a sale of a *patni* estate on account of arrears of rent to be valid, it is necessary that all the provisions of Regulation VIII of 1819 should have been strictly carried out. Cl. 2 of s. 8 requires three separate notices to be given, one to

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 exclusivly 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*

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(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.