

*Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot,
Mr. Justice O'Kinaly, Mr. Justice Macpherson, and
Mr. Justice Ghose.*

SURNOMOYI DEBIA (SALE PURCHASER) v. GRISH CHUNDER MOITRA (DEFAULTER).* 1891
March 24.

*Sale for arrears of rent—Regulation VIII of 1819, cl. 3, s. 8, and s. 14—
Putni sale—Notices, Publication of—Ostum sale.*

It is imperative that the notices referred to in clause 3, section 8, of Regulation VIII of 1819, be published previously to the 15th Kartick. Non-compliance with such direction is a "sufficient plea" within the meaning of section 14 of the Regulation for reversal of a sale held thereunder. *Matungee Churn Mitter v. Moorravy Mohun Ghose* (1) dissented from.

REFERENCE to a Full Bench made by PRINSEP and TREVELYAN, JJ.

The facts on which this reference arose were that a petition was made for the sale of a certain *putni* tenure on the 1st Kartick 1293 under the provisions of Regulation VIII of 1819, notice of the sale having been published on the 15th Kartick. The sale took place on the 2nd Anghran. Under section 8 of this Regulation such notice should have been published "at any time previous to the fifteenth of the month of Kartick."

In a suit brought by the defaulting putnidar for the purpose of setting aside this sale amongst others, the question arose whether such non-compliance with section 8 was a sufficient plea, within the meaning of section 14 of the Regulation, to set aside the sale. The Court of first instance decided in favour of the purchaser, upholding the sale. The District Judge, however, held that the notice not having been published before the 15th Kartick, the sale must be set aside.

On appeal to the High Court the case was referred to a Full Bench; the referring order was as follows:—

"Having regard to the terms of the more recent judgment of their Lordships of the Privy Council as reported in *Maharajah*

* Full Bench reference in appeal from appellate decree No. 131 of 1890, against the decree of F. E. Pargiter, Esq., Officiating Judge of Rajshahye, dated 6th November 1889, reversing the decree of Babu Aghore Nath Ghose, Subordinate Judge of that district, dated 25th May 1889.

(1) I. L. R., 1 Calc., 175; 24 W. R., 453.

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of *Burdwan v. Tarasundari Debi* (1), we find it necessary to refer the point arising in this case to a Full Bench of this Court, inasmuch as the opinion that we are inclined to hold, and which is in accordance with that expressed in the case of *Ahsanulla Khan v. Hurri Churn Mosoomdar* (2), is opposed to that expressed by two Benches of this Court in the cases of *Sreemutty Dasse v. Pitambur Panday* (3) and *Matungee Churn Mitter v. Moorrory Mohun Ghose* (4).

“The point which we desire to refer is, whether the publication of notices relating to an impending *putni* sale, made on the 15th Kartick, on a date later than that prescribed by law, is not a sufficient ground for setting aside a sale subsequently held, and whether under the terms of section 14 (Regulation VIII of 1819) this was a sufficient plea for a reversal of that sale.”

Mr. *H. Bell* (with him Baboo *Rash Behari Ghose* and Baboo *Bhuban Mohun Das*) for the appellant :—Section 8, clause 2, is not imperative but directory as regards the publication of notice. See *Ahsanulla Khan v. Hurri Churn Mosoomdar* (2), which is in my favour on this point: the objection, to succeed, must be one of substance, and not merely formal—*Sreemutty Dasse v. Pitambur Panday* (3). Clause 3 of the section makes no mention of the date of the proclamation in the *mofussil*. There is no repetition of the words “before the 15th Kartick.” The case of *Maharajah of Burdwan v. Tarasundari Debi* (1) turns upon the place at which the publication should be made, not on the time. The rights of defaulters are covered by section 14 of the Regulation; their remedy is to sue. The case of *Matungee Churn Mitter v. Moorrory Mohun Ghose* (4) is exactly to the point, and is in my favour. The Privy Council case does not narrow either this decision or the one by Pontifex, J.,—*Sreemutty Dasse v. Pitambur Panday* (3). I would further refer to *Ram Subak Bose v. Monmohini Dasse* (5) and *Maharani of Burdwan v. Krishna Kaminee Dasi* (6).

(1) I. L. R., 9 Calc., 619; L. R., 10 I. A., 19.

(2) I. L. R., 17 Calc., 474.

(3) 24 W. R., 129.

(4) I. L. R., 1 Calc., 175; 24 W. R., 453.

(5) L. R., 2 I. A., 71; 14 B. L. R., 394.

(6) I. L. R., 14 Calc., 365; L. R., 14 I. A., 30.

Baboo *Mohini Mohun Roy* and Baboo *Ishan Chunder Chuckerbutti*

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for the respondent were not called on.

The opinion of the Full Bench (PETHERAM, C.J., and FIGOT, O'KINEALY, MACPHERSON, and GHOSE, JJ.) was as follows:—

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It appears that a *putni* was sold on the 2nd Aughran 1293, under the provisions of Regulation VIII of 1819, the notices of sale having been published on the 15th Kartick. And the question that has been referred to us is “whether the publication of notices relating to an impending *putni* sale, made on the 15th Kartick, on a date later than that prescribed by law, is not a sufficient ground for setting aside a sale subsequently held, and whether under the terms of section 14 this was a sufficient plea for a reversal of that sale”

The sale took place under clause 3 of section 8 of Regulation VIII of 1819, which runs as follows:—

“On the 1st day of Kartick, in the middle of the year, the zemindar shall be at liberty to present a similar petition, with a statement of any balances that may be due on account of the rent of the current year up to the end of the month of Assin, and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the 1st of Aughran, unless the whole of the advertised balance shall be paid before the date in question or so much of it as shall reduce the arrear, including any intermediate demand for the month of Kartick, to less than one-fourth, or a 4-anna proportion of the total demand of the zemindar, according to the *kistbundi*, calculated from the commencement of the year to the last day of Kartick.”

The clause says that the zemindar shall “cause similar publication to be made,” that is to say, a publication similar to that which is prescribed by the preceding clause 2; and we are of opinion that the requirements in that clause, so far as the publication of the notice of sale, and the period at which it is to be published, must be imported into clause 3 *mutatis mutandis*.

Now, turning to clause 2 of section 8 which relates to a sale in the beginning of the year, it prescribes that the notice of sale shall be stuck up in the Collector's *cutcheri* as also in the *Sudder cutcheri* of the zemindar, and at the *cutcheri* or principal town or village upon the land of the defaulter. And it then lays down that

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“the zemindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the *mofussil* shall be served by a single peon who shall bring back the receipt of the defaulter, or of his manager for the same; or in the event of inability to procure this, the signature of three substantial persons, residing in the neighbourhood, in attestation of the notice having been brought and published on the spot. If it shall appear, from the tenor of the receipt or attestation in question, that the notice has been published at any time previous to the 15th of the month of Bysack, it shall be a sufficient warrant for the sale to proceed upon the day appointed,” and so on.

The clause distinctly provides that it is where the notice has been published *previous to the 15th of the month*, there shall be a sufficient warrant for the Collector to sell the *putni*. And incorporating this provision in clause 3 of the same section, we take it that it is when the notice has been published *previous to the 15th of the month of Kartick* that the Collector is authorized to sell. This view is strengthened by a reference to the procedure laid down in section 10 of the Regulation.

It has, however, been contended before us by Mr. Bell on behalf of the zemindar that what the law regards as essential is the actual publication of the sale notification, and that so far as it prescribes (if clause 2, section 8, does prescribe it) that the notice should be served before the 15th Kartick it is merely directory, and that the non-compliance with that direction is not a “sufficient plea” within the meaning of section 14 of the Regulation for setting aside the sale.

In *Maharani of Burdwan v. Tarasundari Debi* (1), which was a suit brought to set aside a *putni* sale, the Judicial Committee of the Privy Council, in referring to Regulation VIII of 1819, expressed themselves as follows:—

“That is a very important Regulation, and no doubt it was enacted for a certain and defined policy, and ought as a rule to be strictly observed. Their Lordships desire to point out that the due publication of the notices prescribed by the Regulation forms an essential portion of the foundation on which the summary power of sale is exercised, and makes the zemindar, who institutes the

(1) I. L. R., 9 Calc., 619; L. R., 10 I. A., 19.

proceeding, exclusively responsible for its regularity." And later on, with reference to a decision of Sir Barnes Peacock, *Sona Bibee* v. *Lall Chand Chowdhry* (1), they say as follows:—

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"The material part of clause 2, section 8, Regulation VIII of 1819, so far as this case is concerned, is that the notice required to be sent into the *mafussil* shall be served. The zemindar is exclusively answerable for the observance of the forms prescribed by that clause. The subsequent part of the section, which prescribes that the serving peon shall bring back the receipt of the defaulter, or of his manager, or in the event of his inability to procure it, that he shall obtain that which by the Regulation is substituted for it, is merely directory, and if not done, does not vitiate the sale, provided the notice is duly served."

The Judicial Committee use the expression "due publication" of the notice of sale. This, we think, refers, not only to the actual publication of the notice, but also to the time at which it is to be published. The Regulation gives to the zemindar a summary remedy—a power to bring to sale the tenant's estate without a suit; and, therefore, as the Privy Council has also said, it is "to be strictly observed." And if it is to be strictly observed, it is impossible to say that, though the notice of sale may not be published until the 15th Kartick (and we have already said that the Regulation prescribes that it must be published before the 15th Kartick), the requirement of the law as to the publication of the notice has been complied with.

Again, in the case of *Ram Sabak Bose* v. *Monmohini Dasse* (2) the Privy Council says that "the reasonable object of the law (*i.e.*, Regulation VIII of 1819) is that the defaulter should have timely notice of the intention to sell;" and if this object is to be kept in view, it is obvious that an essential requirement of the law was not carried out in this case, and that the *putnidar* has made out a "sufficient plea" for setting aside the sale, within the meaning of section 14 of the Regulation.

The learned Judges who have made this reference refer to the decisions of *Sreemutty Dasse* v. *Pitambur Panday* (3) and *Matungee*

(1) 9 W. R., 242.

(2) L. R., 2 I. A., 71; 14 B. L. R., 394.

(3) 24 W. R., 129.

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Churn Mitter v. Moorrory Mohun Ghose (1) as expressing opinions different from that which they are inclined to hold. In the last case, which was the case of a sale in the beginning of the year, the Court held that "it would be no sufficient plea if the notification had been published on, instead of previous to, the 15th Bysack;" and that even assuming that the publication took place on the 15th, "still the defaulter had two days more than is prescribed by the Regulation," because the sale did not take place until the 3rd Jeyt. For the reasons already expressed, we are unable to agree in the views expressed in this decision.

As regards the other case referred to, we observe that it was decided upon a ground which does not really touch the question involved in this case.

Upon these grounds we are of opinion that the question referred to us must be answered in the affirmative. The appeal will be dismissed with costs.

T. A. P.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Pigot, Mr. Justice O'Keefe, Mr. Justice Macpherson, and Mr. Justice Ghose.

NAGENDRO NATH MULLICK (PLAINTIFF) v. MATHURA
 MAHUN PARHI AND OTHERS (DEFENDANTS).*

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Limitation Act (XV of 1877), s. 14—Computation of period of limitation—Suits for arrears of rent—Act X of 1859.

The provisions of section 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859.

REFERENCE to a Full Bench by NORRIS and BEVERLEY, JJ.; the referring order was as follows:—

"This was a suit for arrears of rent for the years 1292, 1293, and 1294 of the Amli era. The lower Court has held that under section 32 of Act X of 1859 (which is the law of landlord and tenant in the district) the rent for 1292 is barred, and this is the sole point that is questioned before us in appeal.

"It appears that the plaint was presented to the Collector of Balasore on 13th June 1888. It should have been presented,

(1) I. L. R., 1 Calc., 175; 24 W. R., 453.

* Full Bench reference in appeal from original decree No. 29 of 1890, against the decision of Baboo Satish Chunder Bose, Roy Bahadur Deputy Collector of Balasore, dated the 21st October 1889.