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quite possible that this decree was a collusive one obtained in order to put the property beyond the reach of creditors; but whether it was collusive or otherwise, the effect on intending purchasers might very well be to prevent them from bidding anything approaching the real value of the property. The estate was sold subject to all existing encumbrances, and even if the purchaser considered that he was in a position to get that decree set aside, he purchased the property knowing almost to a certainty that he purchased it subject to a law suit.

There is one other point, and that is as to the costs which the Lower Court allowed to the defendants. Five sets of costs were allowed. One of them was in favour of the Secretary of State, and with that we think there is no ground for our interference. The remaining four sets have been allowed to different defendants who had put in an appearance by different pleaders, but their defence was substantially the same. We think that there was no occasion for the Court to allow these defendants separate costs amounting in all to a very considerable sum. The amount awarded in the Lower Court as the costs of the Secretary of State will stand, but the decree, in so far as it allows the sum of Rs. 300 to costs of the remaining four sets of defendants as pleaders' fees, will be set aside, and in substitution of that sum we allow a total sum of Rs. 600 for pleaders' fees, which will be divided equally between them.

As regards the costs in this Court, the respondents who have appeared will get one set of costs.

c. s.

Appeal dismissed.

Before Mr. Justice Macpherson and Mr. Justice Banerjee.

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 July 13.

AZIMUDDIN PATWARI (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (DEFENDANTS);*

Sale for arrears of revenue—Sunset Law—Bengal Act VII of 1868, s. 11—Revenue Sale Law (Act XI of 1859), s. 6.

Section 11 of Bengal Act VII of 1868 makes the Sunset Law as enacted in s. 6 of Act XI of 1859 applicable to sales of tenures under the former

* Appeal from Original Decree, No. 158 of 1892, against the decree of W. H. M. Gun, Esq., District Judge of Noakhali, dated the 30th of March 1892.

Act. The refusal therefore of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal.

THE plaintiff was the owner of a 10-annas share, and the defendants Nos. 6 to 16 were the owners of the remaining 6-annas share in a certain *howla* situated in the Collectorate of Noakhali. For the realization of the sum of Rs. 26-7-6 as rent of the said *howla* due to Government for the instalment of the 28th September 1890, the said *howla* was put up to auction sale in the Noakhali Collectorate on the 10th of January 1891, according to the provisions of Act XI of 1859. Before the sale, the plaintiff tendered the amount of revenue or rent in arrear, but the Collector refused to take it. The defendant No. 2 purchased the said *howla* at the auction sale for Rs. 1,100, and after his purchase he sold a portion of it to the defendants Nos. 3, 4, and 5. The plaintiff then applied to the Commissioner of the district to set aside the sale, but the application was rejected on the 21st April 1891. The sale was confirmed on the 9th of May 1891, and the defendant No. 2 obtained possession of the *howla* land through the Revenue Court on the 4th of July 1891.

The plaintiff then instituted this suit in the District Judge's Court of Noakhali against the Secretary of State, and the defendants Nos. 2, 3, 4, and 5, and added his co-sharers as defendants, to have the sale set aside, on the ground that all the incidental proceedings of the sale were illegal and irregular; that no notice or notification was served; and that in consequence the property fetched an inadequate price.

The District Judge found that there was no irregularity in publishing or conducting the sale, and that the plaintiff had no right to have the sale set aside.

From this decision the plaintiff appealed to the High Court.

Babu *Dwarkanath Chuckerbutty*, Babu *Debendra Nath Mukerjee*, and Babu *Madhabanund Bysack* for the appellants.

Babu *Hem Chunder Banerjee*, Babu *Ram Charan Mitter*, and Moulvi *Serajul Islam* for the respondents.

Babu *Dwarkanath Chuckerbutty*:—The sale was for the arrears, not of an estate, but of a small *howla* held by the plaintiff under,

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the Government as zamindar of a *bhas mehal*; therefore the provisions of Act XI of 1859 did not apply. The demand of the Government for the arrears for which the sale took place comes within the purview of s. 7, cl. (1) and (6) of the Public Demands Recovery Act, Bengal Act VII of 1880; therefore the sale ought to have taken place under that Act. Even conceding that section 11 of Bengal Act VII of 1868 covers the case, the provisions of Bengal Act VII of 1880, which provides procedure more beneficial to the debtor, ought to have been adopted. If the provisions of Bengal Act VII of 1880 were applicable, the Collector had no right to refuse to accept the arrears tendered before the sale, and, therefore, the sale was without jurisdiction. Then even assuming that s. 11 of Bengal Act VII of 1868 governed the procedure, it does not make s. 6 of Act XI of 1859 applicable in its entirety, because s. 11 of Bengal Act VII of 1868 says "the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act XI of 1859." This only shows that the *procedure* of the sale was to be governed by the provisions of Act XI of 1859, and the provisions as to the power of the Collector to refuse to accept the arrears after sunset on the last day as contained in s. 6 of Act XI of 1859 do not apply to a sale under s. 11 of Bengal Act VII of 1868. It is clear on the evidence that the notification provided by law has not been published at all. Such a case is not covered by the provisions of s. 8 of Bengal Act VII of 1868, which only cures the defect in the manner of the publication; it was not intended to cover a case of no publication—*Bal Mokoond Lal v. Firjudun Roy* (1), *Lala Mobaruk Lal v. Secretary of State for India in Council* (2), and *Sadhusaran Singh v. Panohdeo Lal* (3).

The inadequacy in the price fetched was due to the non-publication of the necessary notification.

Babu Hem Chunder Banerjee:—The case is covered by the express language of s. 11 of Bengal Act VII of 1868: s. 2 of Act VII of 1880 leaves it entirely to the discretion of the Collector to apply the provisions of Bengal Act VII of 1880 or not. The sale

(1) I. L. R., 9 Calc., 271.

(2) I. L. R., 11 Calc., 200.

(3) I. L. R., 14 Calc., 1.

took place under the provisions of s. 11 of Bengal Act VII of 1868, and the irregularities complained of, if any, are cured by the provisions of s. 8 of Bengal Act VII of 1868. There was no inadequacy of price, as the learned Judge finds that the properties are liable to the action of the adjacent river.

Babu Dwarka Nath Chuckerbutty replied.

The judgment of the Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

The plaintiff, who is the appellant in this Court, was part owner of a tenure appertaining to a Government *khas mehal*. The tenure was sold by the Collector for arrears of revenue, and was purchased by the second and third defendants in this suit, who subsequently disposed of a portion of their interest to the other defendants. The object of this suit is to set aside the sale and to recover possession of the property sold, on the ground that the sale was illegal and that it was also irregular, and that in consequence of the irregularities it had been sold for a great deal less than its real value. The Lower Court dismissed the suit, holding that the alleged irregularities were not proved and that the sale was not illegal.

It appears that before the sale the plaintiff offered to deposit the amount of the revenue or rent in arrear, but that the Collector refused to take it. It is argued that the sale was illegal because the Collector had no authority to refuse to receive the money; and that the money having been tendered the property ought not to have been sold.

The validity of this contention depends upon the question whether the Sunset Law applies to the sale of tenures. It is contended in the first place before us that this sale did not take place under the provisions of Act XI of 1859 and Bengal Act VII of 1868, but under the Public Demands Recovery Act. For that contention we think there is no ground. It is clear that the sale was not, as a matter of fact, held under Bengal Act VII of 1860, and also that it was not regarded by the plaintiff as a sale under that Act. The irregularities and illegalities charged in the plaint are those which would arise in connection with a sale held under the Revenue Sale Law.

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Then as to the question whether the Sunset Law applies to the sale of tenures, s. 11 of Bengal Act VII of 1868, which is the section applicable, enacts that "whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of the said Act XI of 1859, the Collector to whom such revenue is payable may cause to be affixed such notices as are mentioned in section 5 of the the said Act XI of 1859, and may thereupon cause such tenure to be sold in the manner, and subject to the provisions in and by the said Act XI of 1859 provided for the sale of estates for the recovery of arrears of revenue." The subsequent provisions of that section are modifications of the provisions of Act XI of 1859 in connection with sales held under the section. Section 6 of Act XI of 1859 prescribes the procedure to be followed in notifying a sale, and directs that "except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid, and shall be sold to the highest bidder. And no payment or tender of payment made after sunset of the said latest day of payment shall bar or interfere with the sale, either at the time of sale or after its conclusion." We feel compelled to hold, although somewhat unwillingly, that the contention of the appellant fails; and that the Sunset Law does, and was intended to, apply to the sale of tenures. There seems to be no way of getting out of the direct terms of the section, or of holding that, although the sale is to be held in the manner and subject to the provisions contained in (among other sections) section 6, Act XI of 1859, the provision relating to payment or tender of payment after sunset of the latest day of payment should not apply. In the Lower Court the appellant adduced a good deal of evidence to show that the notice, which, according to the provisions of section 7 of Act XI of 1859, ought to have been served in the Mofussil, was not served. The evidence has been read to us, and we should not feel disposed to hold contrary to the decision of the Lower Court, that it was proved that the notice had not been served. But, however that may be, we think that the appellant is precluded by section 8 of Bengal Act VII

of 1868 from proving that this particular notice was not served; that section makes the certificate of title given under the provisions of the Sale Law conclusive evidence in favour of the purchaser that "all notices in or by this Act or by the said Act XI of 1859 required to be served or posted have been duly served and posted." The cases cited—*Sadhusaran Singh v. Pauchdeo Lal* (1), *Bul Mokoond Lal v. Jirjudhan Roy* (2), *Lala Mobaruk Lal v. Secretary of State for India in Council* (3)—do not help the appellant in his contention that that section does not apply to notices under section 7.

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Another difficulty in the appellant's way is, that, even assuming that the notice under section 7 was not served, and that the price realized was not the fair price of the property, there is nothing to connect the inadequacy with the irregularity. *Prima facie*, an omission to serve a notice, forbidding ryots and under-tenants to pay rent to the defaulting proprietor after the last day of payment would not in any way affect the price which intending bidders would offer for the property.

It was lastly contended that the Collector ought to have proceeded under the provisions of Bengal Act VII of 1880, and not under the provisions of Bengal Act VII of 1868, as when the choice of two procedures is given, that which is most favourable to the debtor ought to be adopted. It is only necessary in answer to point to the provisions of section 2 of Bengal Act VII of 1880, which says that "the powers given by this Act shall be deemed to be in addition to, and not in derogation of, powers conferred by any Act now being in force for the recovery of any due, debt, or demand to which the provisions of this Act are applicable."

The appeal fails on all the grounds which have been taken before us, and must be dismissed with costs.

This judgment will also govern appeal No. 162 of 1892.

Appeal dismissed.

G. S.

(1) I. L. R., 14 Calc., 1.

(2) I. L. R., 9 Calc., 271.

(3) I. L. R., 11 Calc., 200.