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Had the case remained as the Magistrate's book represents it, we should have been reduced to the alternative of either practically trying the case *de novo* or of dismissing it, upon the ground that the Magistrate had come to no finding upon which his conviction could be sustained. Fortunately, however, since the conviction has been impeached by the making of the application for the removal of the case to this Court, the Magistrate has formally drawn up his specific findings of fact, and his order thereon, and we may now safely assume that this document discloses all that in the opinion of the Magistrate is established by the evidence against the petitioners within the scope of ss. 292 and 294 of the Penal Code. (After going through the specific findings of the Magistrate his Lordship found that the evidence was not sufficient to justify the findings of fact arrived at by the Magistrate, and that the words and passages were not obscene within the meaning of ss. 292 and 294, and continued:) It thus appears to us that the grounds upon which the Magistrate has placed his conviction in this case fail: and we can discover in the evidence no other ground upon which it could legally be supported. It follows that the conviction must be quashed, the sentence set aside, and the petitioners released from the obligation of their recognizances.

Conviction quashed.

Attorney for the Crown: *The Government Solicitor*, Mr. *Sanderson.*

Attorney for the defendants: Baboo *G. C. Chunder.*

APPELLATE CIVIL.

Before Mr. Justice Glover and Mr. Justice Mitter.

GOUREE LALL SINGH (PLAINTIFF) *v.* JOODHISTEER HAJRAH AND OTHERS (DEFENDANTS).*

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Regulation VIII of 1819, *ss.* 8 *and* 14—*Suit for Reversal of Sale—Service of Notice.*

Where, in a suit to set aside a patni sale under Reg. VIII of 1819, it was proved that the notice of sale was first stuck up in the cutcherry of the ijaradar (the mehal having been let out in ijara by the patnidar), and on the refusal of the ijaradar's gomasta to give a receipt of service, it

* Regular Appeal, No. 295 of 1874, against a decree of the Subordinate Judge of Zilla East Burdwan, dated the 27th April 1874.

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was taken down, and subsequently personally served on the defaulting patnidar at his house, which was at some distance from the patni mehal, *held*, that the object of the provisions in Reg. VIII of 1819 as to service of notice of sale is not only to give notice of sale to the defaulter, but also to the under-tenants, and to advertize the sale on the spot for the information of intending purchasers; but though those provisions had not been strictly complied with, yet as the plaintiff (the patnidar) did not allege that in consequence of the defective publication there was not a sufficient gathering of intending purchasers, nor that the under-tenants were ignorant of the sale, and were prejudiced by such ignorance, nor that the mehal was sold below its value, *held*, that the defect did not amount to a "sufficient plea" under s. 14 for setting aside the sale.

Byhantha Nath Sing v. *Maharajah Dhiraj Mahatab Chand Bahadur* (1) commented on and distinguished.

Baboos *Bhowany Churn Dutt* and *Umbica Churn Bose* for the appellant.

Baboos *Mohiny Mohun Roy* and *Kally Prosonno Dutt* for the respondents.

The facts and arguments are sufficiently stated in the judgment of Mitter, J., which was as follows:—

MITTER, J.—This is a suit for the reversal of a patni sale under Regulation VIII of 1819. The claim is based upon two grounds, *viz.* (1) that there was no arrear of rent due from the plaintiff on the day of the sale, the same having been paid to the zemindar two days before the day of sale, and (2) that the notification of sale was not duly published according to s. 8 of Regulation VIII of 1819.

The lower Court has dismissed the suit. Upon the first point the lower Court has found that the allegation of payment of rent two days before the day of sale is not true, and that the dakhila produced to establish that payment is not genuine. As regards the publication of the notice of sale what the lower Court finds is this, that it was first stuck up in the cutcherry of the ijaradar (the mehal having been let out in ijara by the patnidar), but the gomasta of the ijaradar having refused to grant a receipt of the service of the notice to the peon who took it, it was taken down and subsequently person-

(1) 9 B. L. R., 87.

ally served upon the plaintiff, the patnidar. The lower Court having come to these conclusions of facts, dismissed the suit.

On appeal the correctness of these conclusions of facts has been contested upon the ground that they are against the weight of the evidence on the record. I do not think that this contention ought to prevail. I am quite satisfied with the reasons given by the lower Court in support of these conclusions, and I do not think that we ought to disturb his findings in appeal. We must, therefore, accept them as giving the true facts of the case.

The next question that has been raised in appeal before us is, that, accepting these findings of facts as correct, still the sale cannot stand, as the notification of sale was not published in the manner indicated in cl. 2, s. 8 of Regulation VIII of 1819. The plaintiff does not deny that two notices, as required by this clause, were stuck up in accordance with law in the cutcherries of the zemindar and the Collector, but his case rests upon the ground that no notice was published as also required by the same clause in the mofussil. The clause in question first of all lays it down that the notice of sale should be stuck up in the cutcherry of the Collector. Then it further provides: "A similar notice shall be stuck up at the sudder cutcherry of the zemindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent, to be similarly published at the cutcherry or at the principal town or village upon the land of the defaulter. The zemindar shall be exclusively answerable for the observance of the forms above described, 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 signatures of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot."

Now it is evident from the facts of this case, that the form prescribed above for the publication of the notice in the mofussil has not been strictly complied with, because the notice,

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though at first stuck up in the cutcherry of the ijaradar, was after a short time taken down and personally served upon the defaulter at his house, which is at some distance from the patni mehal. Therefore the question which we have to determine is whether this defect is such as to entitle the defaulter to ask the Court to reverse the sale upon that ground alone. In order to arrive at a satisfactory conclusion upon this question, we must first determine what is the object for which this provision as to the publication of this notice in the mofussil has been made, because if it be simply to give notice of the sale to the defaulter, it is clear that in this case we ought not to give effect to the contention of the plaintiff, who has got a more direct notice of the sale, as it was personally served upon him. It has been decided by Sir Barnes Peacock, C.J., in the case of *Sona Beebee* v. *Lall Chand Chowdhry* (1), that a patni sale should not be set aside for mere formal defects in the publication of the notice if it proved that it has been served upon the defaulter. This case has been quoted with approbation by their Lordships in the Judicial Committee of the Privy Council in the case of *Ram Sabuk Bose* v. *Kaminee Koomaree Dossee* (2). The same view of the law has been taken by a Division Bench of this Court in the case of *Pitambur Panda* v. *Damoodur Doss* (3).

Now it is clear that one of the objects of this provision is to give notice of the sale to the defaulter, and so far as that object is concerned, the plaintiff, as I have remarked above, has no valid ground to complain. But the question is,—is that the sole object? I do not think it is. If it were the sole object, we should have naturally expected that handing over the notice direct to the defaulter or his agent would have been laid down as the ordinary and the principal mode of service, and the sticking up of the notice in his cutcherry, or the publication of the same "at the principal town or village upon the land," would have been laid down as the substituted mode of service to be resorted to, if it be impracticable to effect the service in the first

(1) 9 W. R., 242. (2) 14 B. L. R., 394.

(3) 24 W. R., 133. See also *Matunginee Churn Mitter* v. *Moorrary Mohun Ghose*, I. L. R., 1 Calc., 175.

mentioned mode. Then it must be remembered that there is no other provision in the Regulation for advertizing the sale in the mofussil except the one under consideration. Then it also must be remembered that important privileges have been given to the under-tenants by the Regulation to protect their rights, and there is no other provision in it of giving notice of the sale to them than the one indicated in the extract I have made from the Regulation. The letter of the law also leads to this conclusion, because it speaks of the notice of sale being published on the spot. It appears to me from these considerations that the object of this provision in the Regulation is not only to give notice of the sale to the defaulter, but also to under-tenants, and further to advertize the sale "on the spot" for the information of the intending purchasers.

We have, therefore, next to consider whether the defects in the publication of the notice of sale in the mofussil in the case have been such as to defeat the object mentioned above. S. 14 of this Regulation, which gives to the defaulter the right of contesting the validity of the sale in a Civil Court, provides that the sale should be reversed upon "a sufficient plea" being established. Has the plaintiff established "a sufficient plea" in this case which would entitle him to ask the Court to set aside the sale? It has been found that the notice of the sale was stuck up in the ijaradar's cutcherry and was not taken down until after some time; that the peon, who took it there, asked the gomasta of the ijaradar to grant a receipt of the same, and there was some conversation between them as to whether he (the gomasta) was the right person who should give this receipt; and on his finally refusing to give it that the notice was taken down and brought away to be personally served upon the defaulter. The plaintiff has not established any circumstance in this case to show that this was not sufficient publication of the notice of the sale in the mofussil. He does not state that in consequence of this defective publication of the notice there was not a sufficient gathering of intending purchasers at the time of the sale. Nor does he complain that his under-tenants were ignorant of the impending sale of the parent talook, and were therefore prevented from depositing the arrears of rent to stay the sale. He in

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his plaint puts the same valuation upon his patni mehal which it fetched at the auction-sale. Upon the whole I am not prepared to say that the defects established by the plaintiff in the manner of the publication of the sale notification in the mofussil are such as to amount to "a sufficient plea" within the meaning of s. 14 of Regulation VIII of 1819.

It remains to notice a case—*Bykantha Nath Singh* v. *Maharajah Dhiraj Mahatab Chand Bahadur* (1)—upon which the learned pleader for the appellant laid great stress in the course of the argument. In that case there was no attempt made by the zemindar to publish the notification of sale in the mofussil. There was further a very grave irregularity in sticking up the notice of sale in the Collector's cutcherry, and it was held that these defects were sufficient to vitiate the sale. I do not think that any inflexible rule of law was laid down there, that any departure from the forms laid down in cl. 2, s. VIII of Regulation VIII of 1819, would be sufficient to entitle the defaulter to set aside the sale. What was virtually held in that case was that the irregularities established there were sufficient under the law to vitiate the sale.

The result therefore is that this appeal must be dismissed with costs.

GLOVER, J.—Had it not been for the strongly expressed opinion in the case referred to by Mitter, J., in which case however the judgment was to a certain extent approved of by the Privy Council, I should have thought that the words of the Regulation were imperative, and made all sales void when there had been no proper service of notice in the mofussil cutcherry. But after these decisions I do not see how I can retain my opinion, and I am therefore not prepared to dissent from the judgment of my learned colleague.

The appeal must be dismissed with costs.

Appeal dismissed.

(1) 9 B. L. R., 87.