

## APPELLATE CIVIL.

*Before Mr. Justice Jackson and Mr. Justice McDonell.*

MATUNGEE CHURN MITTER (PLAINTIFF) v. MOORRARY MOHUN  
GHOSE AND OTHERS (DEFENDANTS).\*

1875  
Nov 23.

*Putni Tenure, Sale of, for Arrears of Rent—Regulation VIII of 1819, s. 8,  
cl. 2, and s. 14—Date of Publication of Notice.*

The fact that the receipt of the notice of sale was dated the 15th of Bysack, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of s. 8, cl. 2 of Reg. VIII of 1819, was held not to be sufficient ground for setting aside the sale of a putni tenure for arrears of rent (1). There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elapsed before the sale actually took place, the Court refused to set aside the sale.

It would not be a "sufficient plea" within the meaning of s. 14 that the receipt had been obtained, or the notification published, on, instead of previous to, the 15th of Bysack.

SUIT by the holder of a 12-anna share of a putni tenure, to set aside a sale of the tenure for default in payment of rent, upon the ground, amongst others, that the notification of sale was not published before the 15th Bysack as required by cl. 2, s. 8 of Regulation VIII of 1819. The defendants were the zemindars and the purchasers at the sale. The receipt for the service of the notification bore date the 15th Bysack, and was signed by four munduls of the village, in which the plaintiff's mâl cutchery was situated. The serving peons deposed that they had served the notification of sale on the holder of the

\* Regular Appeal, No. 240 of 1874, against a decree of the Subordinate Judge of Zilla Hooghly, dated the 4th of July 1874.

(1) As to how far a strict compliance with the provisions of sec. 8, cl. 2 of Reg. VIII of 1819 is necessary, see *Baikanthunath Sing v. Maharajah Dhiraj Mahtab Chand Bahadur*, 9 B. L. R., 87, and cases there cited, and *Ramsabuck Bose v. Kaminee Koomarce Dossee*, 14 B. L. R., 394.

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4-anna share on the 13th or 14th of Bysack, and that they went to the plaintiff's house on the same day, but found neither the plaintiff nor his servants there; that, on the following day, they went to the plaintiff's māl catchery, but were unable to find either the plaintiff or his gomasta or any other servant, and that they thereupon sent for the munduls of the village, read the notice to them and affixed it to the catchery, and obtained from them the receipt dated 15th Bysack. The sale took place on the 3rd Joisto, seventeen days after this.

The Subordinate Judge was of opinion that there was a sufficient publication of the notice, and dismissed the suit. The present appeal was then preferred by the plaintiff.

Baboo *Chunder Madhub Ghose*, for the appellant, contended that it was essential to the validity of a sale under Regulation VIII of 1819, that the provisions of the Regulation should be strictly complied with. The Collector must be satisfied that the notice was published before the 15th Bysack, whereas in the present case the receipt produced by the defendants clearly proved that it was not so published.

Baboos *Mohini Mohun Roy* and *Rash Behary Ghose*, for the respondents, contended that the object of the Regulation was to give the defaulter sufficient notice of the intended sale, and the law considered fifteen days to be sufficient; see *Haranath Gupta v. Jagannath Roy Chowdhry* (1). Here the plaintiff had had at least seventeen days' notice, and it was not pretended that he had been in any way damnified.

Baboo *Chunder Madhub Ghose* in reply.

The judgment of the Court was delivered by

JACKSON, J.—In this case, the suit was brought for the purpose of setting aside the sale of 12-anna share of a putui tenure held by the defaulter. A great number of objections, some of a frivolous kind, and some of an unjustifiable kind, have been brought forward in appeal, but the only one which deserves

(1) 9 B. L. R., 89 note.

notice or which was seriously pressed is that where it is contended that the notice in this case does not appear to have been published before the 15th Bysack, the sale having taken place on the 3rd Joisto following. Now, it is to be observed that the Legislature, in passing Regulation VIII of 1819, for just and equitable purposes, prescribed a variety of forms required to be gone through by zemindars, on applying for the sale of a putni tenure for arrears accrued due thereon, some part of the procedure being carried out by officers of the Collector's establishment: and one of the matters prescribed by s. 8, cl. 2, is that the Collector should be satisfied of the service of the notice, either by the receipt of the defaulter, or of his manager; or, if that cannot be procured, then by the signature of three substantial persons residing in the neighbourhood. Then it says:—"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." That and other rules having been so laid down, s. 14 of the same Regulation says:—"It shall be competent to any party desirous of contesting the right of the zemindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zemindar for the reversal of the same, and upon establishing a sufficient plea to obtain a decree with full costs and damages." The meaning of that provision, as it appears to me, is, that, if the defaulter or the alleged defaulter should be able to make out that the zemindar was not in a condition to obtain the sale of his under-tenure, that there had been no balance due, or that the procedure enjoined by the Regulation had been neglected, so that the defaulter has been prejudiced by reason of that neglect, then the Civil Court is declared entitled to set aside the sale and to grant a decree to the plaintiff with full costs and damages. But it certainly would be no "sufficient plea" or substantial cause of complaint that the receipt in question had been obtained, or that the notification had been published on, instead of previous to the 15th of the month of Bysack. The law says that if it shall appear, that is, appear to the Collector, that the

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notice has been published at any time previous to the 15th of the month of Bysack, that shall be a sufficient warrant for the sale to proceed. Now, in the receipt which has been read to us in this case, the particular time of publication is not stated. The receipt is dated the 15th, and has the signatures of three substantial persons which is to be accepted only in case of inability to procure the receipt of the defaulter. It might very well be that the previous day or days had been spent in vain efforts to procure the signatures of the putnidar or his agent, and that the receipt was afterwards completed by the signatures of the munduls, obtained on the 15th of Bysack, and this might well have satisfied the Collector that the notice had been in fact published previous to the 15th. That being so, and no injury to the plaintiff being at all made out, it appears to me that the ground set up is wholly insufficient to induce this Court to set aside the sale. It may be added as it appears in this particular case that the sale, instead of taking place on the 1st of Joisto, did not take place until the 3rd, and therefore even if we assume that the publication had taken place on the 15th, still the defaulter had two days more than is prescribed by the Regulation. The appeal is dismissed with costs.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Mr. Justice Phear.*

KENNELLY v. WYMAN.

1876  
Feb. 14.

*Practice—Inspection of Documents—Rules of High Court of 6th June 1874, 50, 52.*

Where the defendant stated in an affidavit, that a schedule annexed thereto contained a list of all the documents in his possession or power relating to the suit, and a certain other document was not mentioned in the schedule, though referred to by the defendant in his written statement, held on the hearing of a summons to consider the sufficiency of the affidavit that the plaintiff could not cross-examine on the affidavit but could only show it was not an honest affidavit. The proper course was to apply for inspection of the particular document referred to in the written statement and omitted from the schedule, if inspection was needed.

THIS was a suit to recover arrears of salary and damages for