

Before Mr. Justice Brett.

1908
 May 14.

SARAT CHANDRA ROY CHOWDHRY

v.

JATINDRA NATH MUKERJEE.*

Sale-certificate—Transfer of title—Registration—Transfer of Property Act (IV of 1882) s. 54—Registration Act (III of 1877) s. 17 (c)—Fishery rights.

Sale-certificates, that are granted by the Collectors after sale of "B class" or surplus lands acquired by Government under the provisions of the Land Acquisition Act, are sufficient in themselves to validate the transfer of title from Government to the transferee without being registered.

Fishery rights in water on certain portions of the land transferred to the purchaser by the sale-certificates, cannot exist separate from that land.

SECOND APPEAL by Raja Sarat Chandra Roy Chowdhry and others, the defendants.

The plaintiff-respondent, Jatindra Nath Mukerjee, based his claim in these suits on the purchase made by his father, Abhoy Charan Mukerjee, of certain "B class" or surplus lands alleged to have been acquired under the Land Acquisition Act for the Eastern Bengal State Railway. The lands in suit were sold at auction by the Collector of Purnea in June, 1904, and were purchased by Abhoy Charan Mukerjee, who subsequently transferred them to his son, the plaintiff-respondent.

The plaintiff alleged that the Collector deputed an Amin to give Abhoy Charan possession of the land, which he had purchased, but the defendants-appellants prevented possession being given to Abhoy Charan. The plaintiff accordingly sued for possession and mesne profits.

The sale of "B class" lands was made by the Collector in accordance with the Rules framed by the Board of Revenue, and the sale certificates were issued to the transferee in accordance with those Rules, but not registered.

* Appeals from Appellate Decrees, Nos. 2022 of 1908 and 249 of 1907, against the decrees of J. C. Twidell, District Judge of Purneah, dated July 11, 1906, confirming the decree of S. S. Saadat Hossain, Munsiff of Katihar, dated Mar. 20, 1906.

The defendants contended, *inter alia*, that the sale certificates, not being registered instruments, did not effect a valid transfer of title to the land in suit; that the water and fishery rights were never acquired by Government; and that the right of fishery was not an incumbrance within the meaning of s. 16 of the Land Acquisition Act, and, therefore, it could not be extinguished.

The Court of first instance decreed the suits for possession, including the *jalkars*, but disallowed the plaintiff's claim as regards mesne profits. The District Judge, on appeal, upheld the judgment of the first Court.

The defendants appealed to the High Court.

Babu Joy Gopal Ghosha, for the appellant in Second Appeal No. 2022 of 1906. The plaintiff has not proved his title to the lands. The sale-certificates granted by the Collector not being registered instruments are not admissible in evidence. The plaintiff has, therefore, no valid title to the lands.

Moulvi Skamsul Huda (Moulvi Mahomed Tahir with him), for the appellants in Second Appeal No. 249 of 1907. Under s. 54 of the Transfer of Property Act, the transfer of title to the lands in suits should have been by a registered instrument or by delivery of possession. The sale-certificates are not registered, nor was there any delivery of possession within the meaning of that section. The respondent has, therefore, no title to the lands: *Sibendrapada Bunerjee v. Secretary of State for India* (1). Although these lands were sold to the highest bidder, the sale was a private one in the sense that the land in suit was sold as private property of Government and not under any Statute. [BRETT J. The sale took place under the Land Acquisition Act.] That Act provides for acquisition of lands, but does not provide for sale of surplus lands. Here the Collector, who sold the lands, acted as a private proprietor of the property, and therefore the sale-certificates should have been registered.

[BRETT J. The property did not vest in the Collector personally, and therefore he did not sell it as a private proprietor, but on behalf of the Government.]

1908
 SABAT
 CHANDRA
 ROY
 CHOWDHURY
 v.
 JATINDRA
 NATH
 MUKERJEE.

1908
 SARAT
 CHANDRA
 ROY
 CHOWDHRY
 v.
 JATINDRA
 NATH
 MUKERJEE.

Babu Mahendra Nath Roy (*Babu Atul Krishna Roy* with him), for the respondent in Second Appeal No. 2022 of 1906 and in Second Appeal No. 249 of 1907. Under the special provisions of s. 17, cl. (o) of the Registration Act, all sale-certificates granted by Civil or Revenue Officers are exempted from registration. See also Land Acquisition Manual, Ch. III, Rule 4, p. 77 and Rule 10, p. 78.

Moulvi Shamsul Huda, in reply. That section of the Registration Act refers only to certificates, which can be granted under statutory provisions. These lands were sold under no statutory provisions: the provisions of s. 17 of the Act have no application to sales of surplus lands.

As to our *jalkar* or fishery rights, the Courts below are wrong in holding that they passed along with the lands. They are quite distinct rights; and there was no award made by the Collector regarding those rights.

BRETT J. In support of appeals Nos. 2022 of 1906 and 249 of 1907, the common point, which has been taken, is that the sale-certificate granted by the Collector after the sale of the land to the present plaintiff's father in these two cases, was not sufficient in law to effect a valid transfer of the title in the land to the purchaser.

It has been argued that the provisions of section 54 of the Transfer of Property Act would apply to a sale of this description, and that it would be necessary after such a sale, in order to effect a valid transfer of title, either that a registered document should be executed or that the property should be delivered to the vendee.

It appears that in these two cases, as in the others, the sale was held at a public auction by the Collector and the purchase was made by the father of the present plaintiff at that sale. Afterwards an Amin was deputed by the Collector to make over possession of the property to the transferee, but when the Amin went to deliver possession he was obstructed by the defendants and was, therefore, unable to place the transferee in possession. The present appellants, the defendants, are the persons, who

obstructed the Officer of Government from delivering possession to the transferee; and even if the provisions of section 54 were applicable to the present case, in my opinion, it would not be open, in these suits, to the appellants to rely on their own wrongful acts as invalidating the transfer of the land to the plaintiff's father or preventing him from acquiring a valid title.

It appears, however, clear that the sale in both cases was made by the Collector in accordance with the Rules issued by the Board of Revenue and that, after the sale, the Collector, in accordance with these Rules, issued sale-certificates in proper form to the transferee. These certificates were in my opinion sufficient in themselves to transfer the title from Government to the transferee, and section 17, clause (o), of the Indian Registration Act is authority for the contention advanced by the learned vakil for the respondent that such certificates were sufficient to validate the transfer of title to the transferee without being registered.

This is the only point urged in support of this appeal(1) and, as I find that point fails, I dismiss the appeal with costs.

In this appeal (2) it is further contended that the defendants were in possession of the fishery rights in the water on certain portions of the land, the subject of this suit, and that those rights could not be transferred by the sale-certificate.

It seems, however, that the only pieces of water, in which these rights were claimed, were those collected in borrow-pits, and I am unable to hold that these rights could exist separate from the land or that they were such rights as would remain with the defendants after the transfer of the land to the purchaser.

No other point is raised in support of this appeal(2), and, as it fails, I dismiss the appeal with costs.

Appeal dismissed.

B. D. B.

(1) S. A. No. 2022 of 1906.

(2) S. A. No. 249 of 1907.

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