

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and
Mr. Justice Geidt.

GOBINDA CHANDRA SHAHA

v.

HEMANTA KUMARI DEBI.

1903

Aug. 19.

Parties—Sale for arrear of revenue, suit to set aside—Secretary of State, whether necessary party—Public Demands Recovery Act (B.C. I of 1895) ss. 7, 8.

In a suit to set aside a sale held under the provisions of the Public Demands Recovery Act, the Secretary of State for India in Council is a necessary party.

Bal Mokoond Lall v. Jirjadhun Roy(1) and *Balkishen Das v. Simpson*(2) distinguished.

SECOND appeal by the plaintiffs, Gobinda Chandra Shaha and others.

This appeal arose out of an action brought by the plaintiff to set aside a sale held under the provisions of the Public Demands Recovery Act (B.C. I of 1895). The allegations of the plaintiffs were that no part of the amount for which the certificate was issued was due by the judgment-debtors; that no notice under section 10 of the Public Demands Recovery Act was served on them; that the sale proclamation was not published, and that they thereby sustained substantial injury; and that the property which was worth about Rs. 500 was purchased by defendant No. 1, who was one of the judgment-debtors in the certificate originally made by the certificate officer, for Rs. 15 only.

The Secretary of State for India in Council was not made a party-defendant to the suit.

The defence *inter alia* was, that the Secretary of State for India in Council should have been made a party to the suit; that the suit was barred by limitation; and that the certificate under which the property was sold was lawfully made.

* Appeal from Appellate Decree No. 396 of 1901 against the decree of Akhoy Kumar Banerjee, Subordinate Judge of Faridpur, dated Nov. 30, 1900, reversing the decree of Jadab Chandra Sen, Munsif of Bhanga dated Jan. 6, 1900.

(1) (1882) I. L. R. 9 Calc. 271.

(2) (1898) I. L. R. 25 Calc. 833; L. R. 25 I. A. 151.

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The Court of first instance dismissed the suit as regards plaintiffs Nos. 1 and 2, holding that they could not get the sale set aside, without first setting aside the certificate, and that their right to get the certificate set aside was barred by limitation; but it decreed the suit as regards the two-anna share of the plaintiff No. 3, holding that the certificate did not bind her share of the property. Against that decision plaintiffs Nos. 1 and 2, as well as the defendant No. 1, preferred two separate appeals to the Subordinate Judge. The learned Judge dismissed the appeal of the plaintiffs, but decreed that of the defendant No. 1, holding that the Secretary of State for India in Council was a necessary party to the suit.

*Babu Priya Nath Sen*, for the appellant, contended that the Secretary of State for India in Council was not a necessary party, and relied on the cases of *Bal Mokond Lal v. Jirjdhun Roy*(1) and *Bahishen Das v. Simpson*(2); he submitted that although these two cases related to sales for arrears of revenue, while in the present case the sale was held for arrears of cesses, that did not make any difference in principle, inasmuch as the interest of the Secretary of State in both these classes of cases was exactly of the same character. It was true that the Secretary of State occupied the position of a decree-holder on a certificate issued for arrears of public demands, but that was only as regards the remedies for enforcing the same: see section 8, Act I of 1895 (B.C). Then assuming that the Secretary of State was a necessary party in an ordinary suit to have a sale for arrears of public demands set aside, still he was not a necessary party to the present suit, as it was based upon the allegations that the defendant No. 1 had fraudulently caused the suppression of the sale proclamation, and purchased the estate at an inadequate price taking advantage of that fraud, and that the share of the plaintiff No. 3 could not be affected inasmuch as the certificate was not issued against her. On the basis of those allegations the suit might be treated as a suit to have it declared that the defendant No. 1 who purchased the estate could not take advantage of his fraud, and should be treated as a

(1) (1882) I. L. R. 9 Calc. 271.

(2) (1898) I. L. R. 25 Calc. 833; L. R. 25 I. A. 851.

trustee on behalf of the original owners, and that the sale, even if it stood confirmed, could not affect the interest of the plaintiff No. 3. To such a suit the Secretary of State, even if he occupied the position of an ordinary decree-holder, was not a necessary party, for those declarations could be made without setting aside the sale.

*Babu Baikuntha Nath Das*, for the respondent, was not called upon.

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MACLEAN, C.J. The Court below was right in holding that the Secretary of State for India in Council was a necessary party to the suit. It is a suit to set aside a sale effected under the provisions of the Public Demands Recovery Act (B.C. I of 1895). Under section 8 of that Act, the Secretary of State for India in Council shall be deemed to be the decree holder, and in all cases therein mentioned, the person named in the certificate as debtor shall be deemed to be the judgment-debtor. The judgment-debtor brings this suit to set aside the sale effected under that statute. It is the long established practice of this Court in suits of this class to make the decree-holder, who is deeply interested in the matter, a party to the suit. In the present case, as has been pointed out, the Secretary of State for India in Council must be regarded as the decree-holder, and I, therefore, think that he is a necessary party to the suit. In the case of *Bal Mokoond Lall v. Jirjudhun Roy* (1) and that of *Balkishen Das v. Simpson* (2), the sales were sales under the Revenue Sale law (Act XI of 1859), and there is no such provision in that Act, as there is in the Public Demands Recovery Act, viz., that the Secretary of State for India in Council is to be deemed the decree-holder.

This is the only ground of appeal: it fails, and the appeal must be dismissed with costs.

GHDT, J. I concur.

Appeal dismissed.

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(1) (1882) I. L. R. 9 Calc. 271.

(2) (1898) I. L. R. 25 Calc. 833; L. R. 25 I. A. 151.