

PRIVY COUNCIL

MAHOMED JAN

v.

GANGA BISHUN SINGH.

P.O.*
1910

Nov. 15, 16.

1911

Feb. 28.

[On appeal from the High Court at Fort William in Bengal.]

Sale for Arrears of Revenue—Revenue Sale Law (Act XI of 1859)—Liability of auction-purchaser in respect of payment of arrears of revenue—Appropriation of payment to particular kist, and acceptance and acknowledgment of Treasury Officer—Subsequent appropriation by Treasury Officer to earlier kist—Sale for arrears so created, suit to set aside—Contract Act (IX of 1872) ss. 59, 60.

Where the proprietor of an estate made a payment in respect of arrears of revenue, and in the document which accompanied the payment to the Government, expressly appropriated it to the satisfaction of a particular kist, and the money was accepted and acknowledged by the Treasury Officer as paid on that account:—

Held, it was not in the power of one of the parties to the transaction, without the assent of the other, to vary the effect of the transaction by altering the appropriation in which both originally concurred.

After a payment had been so specially appropriated and accepted as paid in respect of a kist due in January 1902, the Treasury Officer applied part of it to the satisfaction of an earlier kist due in September 1901, and only paid the remainder towards the January kist, with the result that an arrear was created in the January kist to which the payment had been wholly appropriated, and a sale took place for such arrear. In a suit to set aside the sale:—

Held (reversing the decision of the High Court), that no arrears in respect of the January kist were really due at the date of the sale which was therefore without jurisdiction and invalid.

Semble: Sections 59 and 60 of the Contract Act (IX of 1872) relating to the appropriation of payments might have been applicable to the case, if the parties to the transaction had not by their own actions placed the matter beyond doubt.

APPEAL from a judgment and decree (6th July 1906) of the High Court at Calcutta, which reversed a judgment and decree (16th August 1904) of the Court of the First Subordinate Judge of Chapra.

The plaintiff was the appellant to His Majesty in Council.

* *Present*: LORD MACNAGHTEN, LORD MERSEY, LORD ROBSON, SIR ARTHUR WILSON AND MR. AMEER ALI.

1911
 MAHOMED
 JAN
 v.
 GANGA
 BISHUN
 SINGH.

The suit out of which this appeal arose was for the annulment of a sale held on 26th March 1902 for default of payment of the Government revenue under the provisions of the Revenue Sale Law (Act XI of 1859); and the principal question for determination on the appeal related to the validity of the sale.

The facts are stated in the report of the case before the High Court (PRATT and GUPTA JJ.) which will be found in I. L. R. 33 Calc. 1193.

On this appeal,

DeGruyther, K.C., and *J. M. Parikh*, for the appellants, contended that the sale having taken place without jurisdiction was void and of no effect. The main ground for the sale having been without jurisdiction was that there were no arrears due. The Collector's power to sell depended upon the existence of an arrear: *Balkishn Das v. Simpson* (1); Act XI of 1859, sections 3 (definition of "arrears"), 7, 10, 14, 25 (as repealed and amended by section 2 of Bengal Act); and Rule 1 of the Rules made by the Revenue Board as to payment of arrears, were referred to. The payment of Rs. 73 was deposited expressly on account of the January kist; and though the Collector was not bound to accept it and therefore might have refused it, it was accepted and acknowledged as being in respect of the January kist. It was submitted that the appellant had the power to appropriate the payment to any particular kist, and that sections 59 and 60 of the Contract Act (IX of 1872) were applicable to the case and gave him such power. After receiving the payment as so specially appropriated, the Collector had no power to appropriate part of it to the September kist and then declare that there was an arrear in the January kist and sell the property for that arrear. The sale, it was contended, having taken place under such circumstances was invalid. Reference was made to the Revenue Sale Manual, page 98; Act XI of 1859, sections 5, 6, 17 and 18; The Revenue Board's Tauji Manual (1907) pages 31, 32, Rule 18; *Jogendra Mohan Sen v.*

(1) (1898) I. L. R. 25 Calc. 833, 842; L. R. 25 I. A. 151, 158.

Uma Nath Guha (1); and *Nandan Missir v. Lala Harakh Narain* (2). The judgment of the High Court was also wrong in holding that the appellant was bound to pay the revenue although he had not received the certificate of sale; and *Dheput Singh v. Mothooranath Jai* (3), which decided that the title of an auction-purchaser accrued not from the date of sale, but from the date on which the certificate of sale was granted, was referred to.

B. Dube, for the respondents, contended that the grounds which the appellant now put forward were not those specified in his appeal to the Commissioner; and he was precluded from questioning the validity of the sale on other grounds than those so specified. *Gobind Lal Roy v. Ramjanam Missir* (4); and sections 3, 6, 10, 25 and 33 of Act XI of 1859 were referred to. The liability of the appellant to pay revenue commenced not from the date of the certificate of sale, but from the date when the sale took place; and he then under section 30 of Act XI of 1859 became liable for the arrears due, as he took subject to all existing incumbrances; *Shyam Kumari v. Rameshwar Singh* (5) and Act XI of 1859, sections 28, 53 and 54. Arrears were then due, and it was not necessary under the Act that the sale should take place for any particular kist. The sale could not be set aside for mere hardship. The appellant, it was submitted, had not shown that the sale was held contrary to the provisions of Act XI of 1859, or that he had sustained substantial injury by reason of any irregularity; and the High Court's decision should be upheld as being correct.

The respondents were not heard in reply.

The judgment of their Lordships was delivered by

SIR ARTHUR WILSON. This is an appeal from a decision of the High Court, Calcutta, overruling that of the Subordi-

1911
 MAHOMED
 JAN
 v.
 GANGA
 BISHUN
 SINGH.

Feb. 23.

(1) (1908) I. L. R. 35 Calc. 636.

(2) (1910) 14 C. W. N. 607.

(3) (1864) W. R. Gap. No. 278.

(4) (1893) I. L. R. 21 Calc. 70,

82, 83; I. R. 20 I. A. 165, 174.

(5) (1904) I. L. R. 32 Calc. 27, 38;

L. R. 31 I. A. 176, 186.

1911
 MAHOMED
 JAN
 v.
 GANGA
 BISHUN
 SINGH.

nate Judge of Chapra. The object of the suit, as brought by the plaintiff and now appellant, was to set aside a revenue sale, and to recover possession of the property sold. The defendants were the purchaser and others who derived title from him. In the First Court the decision was in favour of the plaintiff upon grounds which it is unnecessary now to examine.

From that decision there was an appeal to the High Court, and that Court overruled the decision of the First Court. Various grounds were urged on the one side and on the other, on the argument of that appeal, all of which were dealt with by the learned Judges in their judgment, but of all those grounds, there is only one which it appears to their Lordships necessary now to consider.

The facts, so far as it is necessary to examine them at the present stage, can be shortly stated. The property in question is an *ijmali kalam*, forming part of the Mahal Bhawaspur. That property was put up for sale by the Collector of Chapra on the 16th September 1901, in respect of arrears of revenue, but as no bidder offered, the Collector stopped the sale, and declared that the whole estate would be put up to sale at a later date, acting under section 14 of the Revenue Sale Law (Act XI of 1859).

On the 17th September 1901, the plaintiff (as permitted by section 14 already referred to) paid the arrears due, and was declared the purchaser of the *ijmali kalam*. He did not, however, receive his sale certificate until the 8th February 1902. In the meantime, between the sale and the sale certificate, kists of revenue became payable in respect of the property in September 1901 and in January 1902.

On the 13th January 1902 the purchaser, the plaintiff-appellant, paid in to the Treasury a sum of Rs. 73, appropriating that payment in the document which accompanied the payment to the Government to the January kist, and the payment was received and accepted on that account. Subsequently, however, the officers of the Treasury appropriated the sum paid, in the first place to the satisfaction of the September 1901 kist, and then, as far as the money would go, towards the January 1902 kist, the result being, according to

this method of accounting, to leave a sum of Rs. 16-12-2 still due in respect of the January kist.

Subsequently, on the 26th March 1902, the Collector put up the property for sale in respect of the amount so appearing due of the January kist.

The only point which their Lordships think it necessary to dispose of on the present appeal is, whether the amount of the January kist in respect of which the sale was made was really due at the time of the sale, and whether therefore there was any legal power to sell.

Much was said in the argument about the bearing upon the present case of certain provisions of the Contract Act, relating to the appropriation of payments. Those enactments might perhaps have had a bearing upon the case, if the parties had not by their own actions placed the matter beyond doubt.

The money in question in the present case was expressly paid to satisfy the January kist, and it was received and acknowledged on that account. It requires no statutory provision to show that when money has been so paid and received and appropriated, it is not in the power of one of the parties to the transaction, without the assent of the other, to vary the effect of the transaction by altering the appropriation in which both originally concurred.

For these reasons their Lordships are of opinion that no arrears in respect of the January kist were due at the date of the sale, and that therefore the sale was without jurisdiction. Accordingly they will humbly advise His Majesty that the judgment and decree of the High Court should be set aside and that of the Subordinate Judge restored, with costs in both Courts.

The respondents will pay the costs of this appeal.

Appeal allowed.

Solicitor for the appellant: *Edward Dalgado.*

Solicitors for the respondents: *Barrow, Rogers, & Nevill.*

J. V. W.

1911
 MAHOMED
 JAN
 v.
 GANGA
 BISHUN
 SINGH.