

PRIVY COUNCIL

Satish Chandra Chatterji

Vs.

Kumar SatishKantha Roy

P. C. A. No. 33 of 1921 from Bengal A. No. 35 of 1919

(Viscount Finlay CJI. Lords Atkinson Dunedin, J. Sir John Edge and Mr. Ameer Ali JJ.)

27.4.1923

JUDGMENT

Lord Atkinson J.

1. This is an appeal from a decree, dated the 8th July, 1919, of the High Court of Judicature at Fort William in Bengal which reversed a decree, dated the 2nd April, 1917, of the Subordinate Judge, Fourth Court of the 24-Parganas.
2. The main question for decision in the appeal is whether or not a sale of revenue-paying estate purporting to have been carried out under the Bengal Revenue Sales Act, XI of 1859, in respect of unpaid arrears of revenue, and purchased by the appellant SatishChandra Chatterji (now dead) was good and valid.
3. The Subordinate Judge before whom the case was tried decided this question in the affirmative; the High Court decided it in the negative and made the decree hereafter mentioned.
4. For convenience sake the several parties to the suit may be thus denoted; the appellant by his first name, Satish; the first four respondents by their family name of Roy : the fifth respondent by the name of Akshoy; the sixth by that of Sitanath; and the formal respondent by the name of Kali Dasi.
5. The facts out of which the appeal has arisen are somewhat complicated. They may be stated as briefly as is needful as follows:

The estate purported to be sold was the Towzi, No. 2402. It was entered on the Roll of the Collector of the 24-Parganas as subject to the payment to the Government of an annual revenue of Rs. 398-9 annas. It comprised two

villages, Atpur and Panditnagar. It was held jointly by one HemadaKantha Roy, the father of the formal respondent, and the Roys. The estate had never been formally or, legally partitioned, nor the entire revenue apportioned, but the co-owners arranged among themselves to pay to the Government separately their respective appropriate shares of the revenue. Hemada paid separately one-third and the Roys together two-thirds. Hemada had, some years before the sale complained of, mortgaged his one undivided third of this zemindari to a certain Shebait, living in the vicinity, who subsequently assigned this mortgage to the Roys, the members of that family thus becoming owners of two undivided thirds of the Towzi and mortgagees of the remaining undivided one-third. At the date of the alleged sale a sum of Rs. 3,655 odd was due upon this mortgage. In the month of January, 1915, if not for some time earlier, Hemada was very ill. In the early days of that month he was confined to bed, and died on the 10th day of it.

6. Hemada for some considerable time had had in his employment as manager of his estate Sitanath, the sixth respondent. This manager - not from want of funds, that is not suggested - left unpaid the installment, due in the month of September, 1915, of the revenue payable in respect of his employer's share. This instalment only amounted to the paltry sum of Rs. 26-4-8.

7. It is charged that Sitanath withheld the payment of this installment deliberately with the design of bringing about a sale by the Government of the whole Towzi, the revenue never having been apportioned, with the result that the mortgage held by the Roys would, if the sale took place, be annulled, to their great pecuniary loss.

8. The revenue being thus in arrear, the Collector, acting under the powers conferred upon him by the provisions of Ben gal Revenue Sales Act, XI of 1859, on the 8th January, 1915, put up for sale the interest of all, the joint co-owners in the entire Towzi, and sold it to Satish, who was apparently, the highest bidder at the auction, for a sum of Rs. 9,200.

9. The Roys immediately appealed from the order of the Collector, declaring Satish the purchaser, to the Commissioner. It is said that they based their application to have the sale set aside on the ground of fraud as well as of irregularity in the mode in which the sale was constituted and conducted. No evidence has, however, been given to establish this, nor have the Board been referred to any authority to show that the Commissioner would have had jurisdiction to inquire into such a charge, and the terms of the order made by the commissioner on the 1st June, 1915, strongly indicate that no

question of fraud was raised before him. The crucial part of the order runs as follows :-

"It does not appear that there was any irregularity in this case which would justify me in annulling the sale, under Section 25 of Act XI of 1859.

"It also appears from the Collector's report, No. C. 257-6-15, dated the 21st May, 1915, that there is no ground of hardship or injustice on which I could recommend annulment of the sale, under Section 26. This appeal is, therefore dismissed.

"F. J. MONAHAN,

"Commissioner.

"The 1st June, 1915,"

10. It appears to their Lordships to be very strange indeed that no reference is made to the charge of fraud if it had, in fact, been put forward.

11. On the 18th August, 1915, the Roys accordingly instituted the suit out of which this appeal has arisen. They made the following persons defendants : Satish, No. 1; Akshoy, No. 2; Sitanath, No. 3; and Kali Dasi, No. 4, as a formal defendant.

12. The causes of action set forth in the plaint are substantially the following, that Mouzah Atpur, being situated on the bank of the River Hoogly, afforded good sites for jute mills, that it was, in its then state, worth Rs. 15,000, it was worth much more than Rs. 9,200, that Sitanath with the object of inflicting pecuniary loss upon the plaintiffs and serving his own pecuniary interests, in violation of his duty to his employer, entered into a conspiracy with Akshoy (an enemy of the plaintiffs with whom they had been engaged in litigation) and Satish to purchase the afore said Towzi at the auction sale for the benefit of Sitanath, Satish and Akshoy; that with this end in view and to effect this purpose Sitanath abstained from depositing with the proper officer the sum of Rs. 26-4-8; that further in pursuance of this conspiracy these three co-conspirators caused the notices and proclamations of the sale proper to be given and made in such sales to be suppressed and false returns to be filed, thereby preventing the Gomasta of the plaintiffs and also the general public from knowing anything about the wilful withholding of the afore said installment of the Government revenue or of the impending sale by auction, by reason whereof no local purchasers attended the sale, and the Zamindari was sold at an undervalue - Rs. 9,200.

13. The relief claimed was : (1) that the sale should be set aside as invalid; (2) that if in the opinion of the Court the sale was not liable to be set aside that a decree might be passed ordering the defendant Satish to convey to the plaintiffs and to the daughter

and heiress of Hemada the taluk sold at the auction sale; (3) that an ad interim injunction might be granted restraining the taking possession of the taluk by the purchaser and for general relief.

14. These are serious and damaging charges. It appears to their Lordships difficult to understand how any man, even with the feeblest feeling of honour or sense of shame, could if he were innocent, abstain from filing a defence to such accusations and at the earliest moment availing him self of the opportunity of going into Court to meet his accusers face to face.

15. Well, to this plaint Sitanath did not file any written statement or give any evidence. Akshoy, a man of wealth, as he has admitted to be, did not file any written statement, and he and his two sons only gave evidence when by the wise and per emptory action of the High Court, they were forced to do so. Satish, on the 10th January, 1916, did, four months all but eight days from the filing of the plaint, file a written statement.

16. The evidence which he contrived to have substituted for testimony in open Court, in the presence of his accusers, will be presently referred to. In this statement he traverses all the allegations of fraud contained in the plaint, denied that he is related in any way to Akshoy as therein alleged and alleges that the property purchased by him was not worth more than Rs. 9,200, that he purchased it for his own use and benefit with any connection with Akshoy or Sitanath. On the 15th January, 1916, issues, eight in number were settled on these pleadings.

17. of these only four seem of importance at this stage. They are : (1) Have the plaintiffs any cause of action, and does the plaint disclose any cause of action against the defendant No. 1 (i.e., Satish) ? (2) Is the suit, in its present form, maintainable ? (3) Was the Revenue Sale brought about by collusion and fraud on the part of defendants ? (4) Is the sale liable to be set aside as illegal and ultra vires ? The trial did not come on till the 28th February, 1917, over thirteen months after the issues had been settled. Satish was in no hurry to vindicate his character. On his behalf three adjournments were obtained for the filing of his own written statement. On the 21st June, 1916, an order, signed I. G. Goswani, S. J., was made which runs thus :-

"I think the defendant should not be compelled to attend Court for deposing as he has got a big hydrocele from which watery substance conies, and he is not in a position to move to a distance from his house.

It will be for the Presiding Officer of this Court to consider whether it would be possible for him to examine the witness at his house or to issue a commission

for his examination. The learned pleader for the plaintiffs urges strenuously for the examination of the witness before the Court in the interests of justice. That is the reason why the order is passed in the form given above."

18. On 12.12.1916, a definite order is made directing a commission. It runs thus :-

"I have again heard the pleaders on both sides. The defendant has been suffering from an ugly disease. He has got an unmanageable secreting tumour, and the medical certificate shows that he is unable to come to Court to give evidence here.

There is nothing to controvert the fact. I should therefore confirm the order of my predecessor. On the 5th December, 1916, a Commissioner is appointed and directed to submit his report before the 19th December, 1916."

19. The date of the medical certificate mentioned in this order of the 2nd December is not given. No such document is to be found in the printed book, but in the list of omitted exhibits at p. xx is to be found this description : " Medical certificate given Satish Chandra Chat terji, dated 19th July, 1916." The trial commenced on the 28th February, 1917, and the Commissioner only sent in his report on the 15th February, the evidence having been taken on the 21st and 27th January, and 4th and 5th February, 1917, previous.

20. The plaintiffs filed a petition objecting to the reading of this deposition. The objection came on for consideration on the 23rd March, 1917, when it was read in evidence. Nothing could be more unsatisfactory than this mode of procedure. The principal defendant gives his evidence before the plaintiffs' case has been opened or the evidence of their witnesses given. The Court which has to decide has no opportunity of judging of the veracity of the witness from his conduct and demeanor. All the advantage of confronting a witness accused of a fraud, such as Satish is accused of, with his accusers is lost.

21. Evidence taken on commission should only be permitted to be used where the witness is proved to be too ill to give his evidence in Court or is absent or for other sufficient reason. If Satish went to the Court he could, and presumably would have been accommodated with a seat. Moreover, unless several of the witnesses who have been examined are utterly mistaken, Satish at this time was quite able to drive about and walk from his carriage into houses.

22. The whole procedure in this matter strongly suggests that it was his aversion to undergo the ordeal of an examination in open Court, in the presence of those who

knew him, rather than ill-health which kept him from the witness box.

23. Charges of fraud and collusion like those contained in the plaint in this case must, no doubt, be proved by those who make them - proved by established facts or inferences legitimately drawn from those facts taken together as a whole. Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unravelled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape. Turning to the evidence given before the Subordinate Judge, the first witness of the plaintiffs, Satindra Chandra Bose, does not give any evidence of importance. The same may be said of the second witness, KalibarMitter, save that he gives a description of Sitanath and Akshoy, mentions their respective residences and says that the market value of the property sold was Rs. 50,000 to Rs. 60,000. The fifth witness, HridayNathGhose, only gives evidence as to the service of the notices and proclamations of the sale.

24. The sixth witness, UgundraNathSarkar, merely tells what PanchananMitter told him. (Why he was allowed to give this evidence is strange). He says that after the auction PanchananMitter told him that Sitanath fraudulently caused the sale to be held by not paying the arrears of revenue; that Akshoy, Sitanath and Satish jointly purchased the taluk. He said Panchanan did not tell him the shares which they bought but gave the dates of the purchase and the price. The witness said he did not inquire who supplied the purchase-money, and that Panchanan did not give him any information on the subject.

25. The eighth and ninth witnesses examined for the plaintiffs only dealt with the service of the notices of sale. The tenth gives no evidence touching the formation of the alleged conspiracy, nor the alleged joining in it by Satish or the occurrences at the sale.

26. The eleventh witness Rajendra, the twelfth Ashutosh, and the Maharaja Sir Pradyot Kumar Tagore only deal with the admission of Satish made after the sale; and Sarat Chandra Roy, the thirteenth witness, only with the absence of notices and proclamations of the sale.

27. It is obvious, therefore, from this analysis of the evidence of the witnesses, other than PanchananMitter and PriyaNathGhose, that it affords no proof whatever of the formation of any conspiracy between Sitanath and Akshoy touching any subject. But

both the Subordinate Judge and the High Court have found that there was a collusive arrangement between Akshoy and Sitanath to injure the plaintiffs, and that in order to effect this end they agreed that Akshoy should bid at the sale by auction of the aforesaid Towzi in his own name, and that if declared the purchaser, he (Akshoy) would convey a half-share of the property purchased in favour of Hemada, that Akshoy did bid at the sale, that he was outbidden by Satish, and that the nefarious plan hatched by these two defendants thus failed.

28. The High Court in reference to the same matter said "that it was indisputable that the default in the payment of the installment of Hemada's share of the Government revenue with the object of injuring the plaintiffs was, as the Subordinate Judge has found, deliberately made by Sitanath, and that this step was taken in collusion with Akshoy, who it was agreed should purchase the zamindari at the auction free from encumbrances."

29. The High Court proceeded : "There is some discrepancy as to the exact proportions in which the spoil was to be divided amongst the conspirators, but the details of the proposed distribution are not very material for present purposes;" they (the Court) need only observe that the story seems very plausible; that the third defendant Sitanath looked forward to a share for himself and another for his master; that the complicity of the second defendant, Akshoy, in what the Subordinate Judge described as a nefarious plan, was proved beyond challenge.

30. Thus there are, in effect, two concurrent findings of these two Courts upon an issue of fact, namely, the formation of the corrupt and fraudulent conspiracy between Sitanath and Akshoy of the character and with the aims described. But the only evidence given on behalf of the plaintiffs to sustain these concurrent findings is that of the two witnesses passed over in the above analysis, namely PanchananMitter and PriyaNathGhose.

31. Neither the Subordinate Judge nor the High Court had any other evidence upon which either could have found as they have found, and it is quite obvious that they could not have based the conclusion at which they have arrived on the evidence of these witnesses unless they believed that quoad the matters on which they so found, these witnesses were truthful and reliable. Panchanan, how ever in his evidence goes beyond these matters. He brings Satish into touch with the alleged conspiracy, proves that he entered into it, and deliberately assisted the other conspirators in the carrying out of the objects of their conspiracy. His evidence may be divided into two parts.

32. The first deals with what occurred up to the time they left Akshoy's house on the evening of the 7th January, and the second with what occurred from that time till after the sale.

33. The High Court accepted both parts of Panchanan's evidence. The Subordinate Judge accepted the first part of it, but, for reasons which will be shown to be quite inadequate, rejected the second part of it.

34. As it is this second part which implicates the appellant Satish, it is necessary to deal with all of Panchanan's evidence at length.

35. PanchananMitter was examined on the 2nd and 3rd March, 1917; he deposed that he was 38 years of age, was, and for two years had been, clerk to a Jessore pleader named BabuNibaran Chandra Bose (who happens to be the pleader of the plaintiffs) and was for 14 or 15 years previously the sudder of Hemada, deceased; that he remained in the latter's service up to his death; that Sitanath was Hemada's manager up to that time; that he, the witness, used to write out and send the revenue payable by Hemada by money order to the Collector; that Sitanath calculated the dues on the land; that Hemada had one-third of the AtpurPanditnagar estate; that the plaintiffs had the remaining two-thirds; that there was ill-feeling between Hemada and the plaintiffs, as they had many law suits between them; that before Hemada's death his taluk was sold by auction for arrears of revenue; that Sitanath, the manager, caused it to be sold by refraining from paying the instalment of the revenue which fell due in respect of the September Revenue for 1914, and deli berately withheld it; that Hemada had mortgaged his interest in his share to the Shebait of Dashmahabidya for Rs. 2,000; that this mortgage was purchased by and assigned to the plaintiffs; that on inquiry from Sitanath the latter told him that he would take steps to suppress the publication of the necessary process (i. e., pre sumably notices and proclamations) in the mofussil preparatory to the sale; that Sitanath and he were present at the Atpurcollector's at the time of the sale; that PriyaNath was the Karjyakarak of Akshoy; that Sitanath told the witness he had relations with PriyaNath (i. e., presumably was related to PriyaNath); that Sitanath came from Jessore to Calcutta four or five days before the auction sale; that some two days before the sale he, the witness, came to Calcutta, met Sitanath there and stayed with him at the Sealdah Hotel; that Hemada was then in Calcutta on his death-bed, that Sitanath told the witness that his, Sitanath's, son-in-law would not give security for bidding at the sale, so that the two must go to Akshoy for the purchase-money, that the day before the sale, the two went, between 9 and 10 A. M., to Akshoy's house, 112, Amherst Street, Calcutta, but found he was away from home

at Puri; that they met PriyaNath and Akshoy's two sons, TaradasBabu and ShyamadasBabu; that it was not then settled who was to bid at the auction sale, but that it was arranged to telegraph to Akshoy in Puri to ascertain his views; that a telegram was accordingly sent and a reply received that was as follows :-

"AKSHOY KUMAR CHATTERJI,

Sagarika, Puri.

"KumarsSatishKhirodaHemadaare joint proprietors of Towzi 2402 mahal, Atpur 24-Parganahs on Ganges near Kidderpore. Hemada did not pay revenue and will cause the sixteen annasmahal to be sold to-morrow. Hemada represents total income as Rs. 1,200 and requests us to buy the same in auction within ten thousand rupees and sell half to him; going out to ascertain facts. Wire per mission.

"TARADAS CHATTERJI,

"112, Amherst Street, Calcutta."

"May bid less or more amount if in come is as you represent.

"AKSHOY."

36. The telegram was received at 13-30 and the reply received at 16-40.

37. The witness then stated that Sitanath and he returned to Akshoy's house in the afternoon; that Sitanath suggested that the property should be purchased benami; that one-half of it should remain with Akshoy and the other half be transferred to Hemada [the dying man] in benami of Sitanath by a kobala without any conditions; that the whole purchase-money should be paid on behalf of Akshoy, that Akshoy had several holdings under the plaintiffs and that there were several litigation's between them and him, and that therefore the property should be purchased benami of Sitanath.

38. The witness further stated that Sitanath, PriyaNath, Shyamadas and he him self then went to Satish's house. He corrects this in his cross-examination. In this statement the witness is in error, and says that PriyaNath only went half-way and then descended from the carriage and went to do some other business.

39. The witness states that when they went to Satish's house the latter was informed that under the circumstances mentioned, which were stated to him, the property should be purchased in his benami; that Satish replied that a share should be given to him; that Sitanath agreed to this, and that it was settled that Sitanath, Satish and Akshoy should each get a third share; that the property should be bid at the sale up to Rs. 12,000, and that Sitanath said that the price offered, should at least be Rs. 9,000; that

in that state of things Sitanath, Panchanan and Shyamadas started for Satish's house to interview him; that PriyaNath accompanied them - not, however, with any intention of going to see Satish - half-way, then descended from the vehicle they were in and went off on some business of his own.

40. Though PriyaNath corroborates Panchanan substantially in the latter's description of what occurred up to his separation from the three persons named en route to Satish's house there are some trifling but immaterial discrepancies between these stories, but they are discrepancies of the character that strengthen rather than weaken the evidence of witnesses, since the diversity repels the idea of concocted uniformity.

41. But Panchanan is corroborated and his evidence strengthened in other ways in addition.

42. He is corroborated by the telegram already referred to with the reply to it. He is corroborated by the silence of Sitanath, by the silence of Akshoy's two sons, Taradas and Shyamadas, until they were by the insistence of the High Court, forced into the witness chair.

43. All the three were accused of being involved in the deliberate commission of a base and contemptible fraud. The elder of the two is a legal practitioner, the younger, an engineer and contractor, educated at the Government Industrial College; presumably each an intelligent man.

44. Their silence might have been wise if they were guilty and ashamed of what they had done, apprehensive of disgrace and punishment. It was idiotic and cowardly if they were innocent. When Shyamadas does appear he commences by swearing what is absolutely, incredible, namely, that he did not know in connection with what suit he was summoned as a witness.

45. He made no allusion to the alleged meeting at his father's house; never denied it had taken place there, or the making of the arrangement there deposed to by Panchanan and PriyaNath.

46. He denied, no doubt, that he visited Satish's house the night before the sale. He is asked if he knows Satish, and his reply is rather peculiar. He answers "No; I never had any connection with him before," but that statement is followed by two others which are also incredible.

47. He says he did not know he had a rival bidder at the sale and did not ask who the

other bidder was, but he pretended to tell all this rival bidder did, though he never asked his name.

48. Well, Taradas, when produced, begins by refusing to admit that he sent a telegram, the copy of which is produced to him. He says he has no cause of doubt or any cause of belief he did. He does not deny that Sitanath was at his father's house before he sent the telegram, or that both were present there later in the evening. He says that PriyaNathGhose was not there, that the Chandra Raja estate officer, i.e., Sitanath, was there, that he asked them to sell half of the property, but nothing was settled about the price; that he, Sitanath, asked the witness Taradas to send a telegram like that produced; that no arrangement was made as to the purchase-money to be paid to his father for the sale of the half-share; that this officer stated to him what the income was and he stated that in the telegram.

49. He says he does not know Satish. He was then asked if, to his knowledge, his father was served, as defendant in this suit, with a copy of the writ. His reply is that this Gomasta told him that a summons had been left with him with a copy of the plaint. He is then asked if he meant to suggest that this Gomasta did not show it to him within a reasonable time. His reply was he does not understand reasonable time, not that very day nor the next day; he might have shown it months or days after.

50. He is asked if the signature on the summons is in his father's handwriting, and he replied it looks like it but is in pencil, and is not exactly like his; some portion of it is written in the hand of a lady which he never writes.

51. He is then asked if it is inaccurate to say he got a copy of the summons. and his reply is :-

"It may have been served on him (i. e., his father) but I got this (i. e., the summons) some time later, and I thought I ought not to take any steps. I did not consult my father regarding it, I might have said to him you have been made a party.' I do not remember whether I said anything or not. I might or I might not have said anything. I refer only important matters to him. I did not consider this matter to be important because we had no connection with this property. I thought we should do nothing."

52. He is then asked, did he think it was important that his father should be charged with fraud and that he should be defended? and his reply was, "I did not think so at that time." He is then asked, "You thought that connection with the property was all important?" and his reply is, "Yes I do not remember any charge of fraud."

53. Taradas added that he did not know Satish. He is asked what instructions he gave his brother Shyamadas about the auction-purchase. His answer is, "Probably I gave him the same instructions I received from my father."

54. Then he was asked, "Was your instruction merely reading out the telegram you received from your father?" His answer is, "No; I gave him more instructions." Then he is asked what was it. and he replied, "I do not remember, he might not understand the telegram fully. I might have told him to go and bid up to Rs. 12,000."

55. Then he is asked, "How much money did you send with your brother Shyamadas?" His reply was, "I do not remember; it might be one-fourth of the amount." Then the question is put to him. "That is one-fourth of Rs. 12,000 equals Rs. 3,000." He is then asked when his brother came back from the sale, "Did you put it to him that if somebody bid higher than your brother why he did not ask permission to bid still higher?" and his answer was, "I do not remember whether I asked him."

56. It appears to their Lordships strange that any legal practitioner could suppose that clumsy, stupid and transparent prevarication such as this witness indulged in could impose upon any legal tribunal worthy of the name, much less upon one of the ability and distinction of the High Court of Calcutta.

57. In their Lordships' view this man's testimony is utterly unreliable, and the evidence of Panchanan is quite unshaken by it.

58. The Subordinate Judge, however, held that this latter witness's evidence is rendered unreliable by another particular matter. It is this. On his direct evidence this witness Panchanan undoubtedly swore that PriyaNath accompanied the rest of the party to Satish's house on the evening before the sale.

59. On cross-examination he corrected that, and stated that PriyaNath only came with the orders half the distance, then descended from the vehicle in which they were and went away on other business.

60. On the face of it this correction looks quite innocent, the mistake being one which a man might well make at night under the circumstances deposed to, but the learned Subordinate Judge, though Panchanan was not asked a single question touching the alteration in his evidence, considered that it showed a dishonest attempt on the witness's part to alter his evidence so as to reconcile it with PriyaNath's, and therefore deprived him of all credit. In their Lordships' view that is not a reasonable construction of the incident, and they concur with the High Court in thinking that

Panchanan's evidence is not shaken by it and that he is notwithstanding it worthy of credit on this as on the antecedent parts of his testimony.

61. In the second part of his evidence Panchanan says that he himself, PriyaNath, Satish, Shyamadas, and a Durwan of Akshoy attended the sale : that a bid was made in the name of Satish, that Rs. 2,300 were deposited in Court that day; that the money was with PriyaNath, who paid it to Shyamadas, and Satish deposited it with the Collector. He said that Hemada owed some money to Sitanath, and that if the property was transferred to Sitanath by Akshoy, the money due to him would be realized; that this was the second object of causing the property to be sold.

62. Shyamadas, he said, paid the purchase money to Satish in notes and gold. He does not remember to whom Satish paid it. Shyamadas bid on behalf of Akshoy; that Satish and Shyamadas stood there side by side. He was not present when the chalan for the money was written. He does not remember whether Satish said to the Collector, "I have not now with me more than Rs. 1,000 and I may be given time for the balance ?"

63. That he came downstairs as soon as the sale was over, and waited there for half an hour; that one-fourth of the purchase money was deposited with the Collector; that it was settled that Satish should pay half the purchase money in order that he might get a one-third share of the property, that according to the arrangement made Akshoy was to advance the whole of the purchase money in the first instance, and Satish was to pay him back half of it when it was settled.

64. It is obvious that the ultimate pecuniary benefit to Satish under this arrangement would be the same as if he advanced the entire of the purchase money in the first instance and Akshoy paid back half.

65. This latter mode of procedure would, doubtless, look to the officials more as if Satish was the real purchaser than the other, and in either case Satish could say with equal truth, as is sworn he did say to the Maharaja, that he had co-sharers in the property, and that Akshoy was one of them.

66. The mere fact that Satish found in the first instance the money to pay the purchase money is not at all, therefore, such a crucial fact as Mr. De Gruyther contended it was, Akshoy could, doubtless, repay him half the money at any time. The witness then explained and excused with fair success, their Lordships think, the part he had taken in the business.

67. Some unfavourable comment was made upon this witness's evidence owing to the

fact that he did not enumerate the particular sums which, together, made up the sum (Rs. 2,300) deposited, but treated it as having been deposited in one sum. That, no doubt, is so, but if that be a discrediting incident, he shares the discredit with Satish himself, who in his cross-examination said :-

"On the day of the sale, having put in notes to the amount of Rs. 2,500 into the Collectorate, I took a refund of Rs. 200 and thus deposited Rs. 2,300 only; this sum of Rs. 2,500 was in notes of the value of Rs. 1,000 and Rs. 500 only. I borrowed those notes from the house of Tarak, my cousin. no mention whatever is made of the Rs. 1,000 it is now alleged he brought with him to the sale, and he represented that the borrowing of the Rs. 2,500 was one transaction. TarakNathBanerji, the money-lender says precisely the same. He said some two or two and a half years ago, in January, he borrowed from me Rs. 2,500 in two hand-notes for Rs. 1,000, the other for Rs. 2,500. The amount of the first remains due, the other was paid. Satish owes money to me, my mother and my sisters also. I have no accounts of my loan transactions. I did not enter the payment of Rs. 2,500 to SatishBabu as debts."

68. PriyaNath's evidence as to what occurred at the sale is not so full as Pan chanan's but it is quite consistent with the latter's. Hementions two important matters. He says that it was thought that the relationship with Satish would not be easily ascertained, and so he was chosen to be a fit person to bid at the sale and purchase the property. (It is not very clear what this means.) He also said that he went to Khulna three days after the sale and saw the entry of the purchase money in the rokar after coming back.

69. Now who and what was Satish : He was a feeble invalid, afflicted with a painful and unpleasant disease. Up to seven or eight months before he was given to drink, and since then, by way of reformation had become an opium-eater.

70. That is the description he gave of himself. He was asked at the end of his cross-examination if he was addicted to intoxicants.

71. His reply was:

"Yes, formerly, I gave up the habit seven or eight months ago." (He was speaking on the 11th February, 1917.) "I have drunk wine up to the value of Rs. 13-8 per bottle. I never drank any thing costlier than that; the price of the same bottle to-day is Rs. 30 to Rs. 32. I have poured out to the goddess of drink Rs. 50,000 or Rs. 60,000. I eat opium twice a day now. As I have got the rheumatism, one tola of opium lasts me 14 or 15 eating twice a day."

72. For the last twenty-three years, he said, he had been purchasing taluks at revenue sales, certificate sales and Civil Court sales. He said he did not know Sitanath or Akshoy and never had any conversation with either of them. His debts, he said at the time he was examined, amounted to Rs. 18,000 or Rs. 19,000. Before buying this property, he said, he did not ascertain even where the property was situated or make any inquiries about it. After the institution of the suit he made no inquiry as to the extent of Hemada's share in the property or as to whether he had an officer called Sitanath, or as to the truth of the charges made against him or whether any officer of Hemada's fraudulently or otherwise, caused the Zemindari to be sold by auction by with holding the revenue. Nor did he make any inquiry as to who Akshoy was. On seeing the bid sheet two or three hours after the sale, for the first time, he ever knew Akshoy's name. He said he never made up his mind to purchase the property till after he had seen the bid sheet. He did not know Taradas nor Kaledas, sons of Akshoy; that he never went to Akshoy's house up to the day he spoke, 4th February, 1917, and never inquired what are the quantities of lakeraj lands or mallands in the taluk. The excuse he made for this amazing indifference and ignorance was that he did not send his officers there to make inquiries touching these matters because there was a criminal case once and if he sent them to inquire, there might be another criminal case, which would cost money. He then added:-

"Therefore I am waiting till the case is over. I am not in very affluent circumstances, you, yourself, see. I have property purchased by borrowing money. How can I then say I am in affluent circumstances?"

73. The plaint was filed on the 18th August, 1915; Satish was examined on the 21st, 27th and 28th January, 1917. It seems to their Lordships quite incredible that for one year and four months he would have abstained from making any inquiries touching a property which he, an embarrassed man, alleged he bought, or have ignored so completely the charges made against him. His conduct as to the property might not be unnatural if he was merely a sham bidder put forward by Akshoy, but it certainly is inexplicable if he was the real purchaser.

74. Akshoy was examined on the 7th May, 1919, he states that his income is about Rs. 30,000 to Rs. 40,000 per annum, that he had houses in Calcutta and elsewhere, and about a lakh of rupees in G. P. notes, most of it made by his own enterprise and speculation; that he had known the Chandra Rajas (i. e., the plaintiffs) since he was at school; that they were the landlords of his family at Khulna; that there were lots of law suits between his family and the Rajas, about a portion of their property, which ended

about a year previous, (i.e., in 1917). He said he heard before he got the summons to give evidence that a suit was going on with the Chandra Raja about properties sold for arrears of Government revenue ; that somebody had purchased it; that the suit was going on in the Alipur court; that this was all he knew. He did not know who the purchaser was; that he was not aware he was a defendant in the suit to set aside the purchase till the day-before-yesterday (i.e., till the 7th May, 1917), when he heard; that he first heard of the institution of the suit to set aside the sale from Satish's Gomasta. He had no information about the property he bid for except his son's telegram. After the sale he had some information.

75. He was asked whether on receipt of the telegram from his son he thought it a bona fide, honest proposition, and he answered:-

"I never thought whether it was reasonable or not, or whether it was proper or not for me to bid at the sale, as the property was going to be sold by auction. I thought as a business matter I could enter it. Whether it was right or wrong I did not think at the time, because the revenue was not paid and the property was going to be sold. The only thing was that I had to sell half to him."

76. He was then asked did he buy any other property in auction sale, and he answered "of course, I bought the tenants' holdings. When they failed to pay the rent they (presumably the holdings) were sold by auction."

77. He admitted he had a talk with the Gomasta of Satish soon after the litigation was instituted ; that the Gomasta told him they were going to apply to set aside the sale. This man did not tell the witness at that time that he was a defendant in the suit : "that between Satish and ourselves (i.e., Akshoy and his people) a suit was pending, and he used to come from time to time in reference to this matter, but he never told me I was a defendant in this suit, though I had occasional talks with him." He said his sons told him that they had not purchased at the auction; that they wrote about it; that they did not tell him who it was who purchased it; that since then he had come to know that Satish purchased it. At that time he did not care to know the name. His sons might have mentioned the name of Satish the first time or afterwards. He denies that he is helping Satish to buy the property.

78. This witness appears to their Lordships to be quite unreliable. He was a defendant in the suit out of which this appeal arises. He was charged with fraud. Service of the plaint must have been effected upon him, and yet, he says, he was never told the nature of the suit. That appears to their Lordships to be quite incredible. They think,

judging from all the probabilities, he must have been told of these things; but being resolved not to play the part of an innocent man and come boldly into Court and defend himself, he thought it wiser to lie low and remain silent, and is now professing this ignorance to excuse his conduct.

79. Mr. Dunne, in his argument on behalf of the respondents, criticised in detail the evidence of the appellants as to the persons from whom and the mode by which he found the purchase money of the property he purchased. Damaging as that criticism was, their Lordships prefer to rest their conclusions in the main on the somewhat broader aspects of the case, including the relative positions of the two most interested men, Satish and Akshoy.

80. The latter, a very wealthy man, so anxious to acquire, though he should have to part with half of it, yet trusting to the information contained in the telegram which Sitanath must have supplied. Himself a tenant of the Roys, yet ready to join in their undoing by forwarding this auction sale provided only this could be effected without his co-operation being disclosed. and on the other side one was a diseased, intemperate and crippled man, accustomed to attend revenue and other sales by auction, but apparently at this time without an anna of his own available to pay for anything he might buy, obliged in this case to borrow every rupee of the purchase money (Rs. 9,200), in some instances at high rates of interest; and further obliged, according to his own story, to pledge to a relative the anticipated compensation which he might receive for the compulsory purchase of some of his property in order to raise Rs. 8,500.

81. If Akshoy had desire to procure the service of a tool to buy for him this property at this auction, giving him, how ever, an interest in the property bought as a reward, and with the help of Shyam das giving to a sham competition at the auction the appearance of reality, he could scarcely have found a person more qualified to fill the role than Satish. The question is, did he fill that role or a role something like it, or did he buy this property entirely for himself, for his own use and benefit ?

82. There is available evidence which, in their Lordships' view, is much more consistent with his having filled the first of these roles than the second. It is the following : RajindraNathBanerji, the Naib on the estate of the Maharaja Pradyot Tagore named Mulapore, who says that this estate lies to the south of the Roys' estate of Atpur; that he knows the district well, including the taluk in dispute; that in 1915 Satish had purchased it at an auction sale, that his employer, the Maharaja, was

anxious to purchase it; that he, the witness, went to Satish's house to propose to buy it on behalf of his master ; that he met Satish and had a talk with him on the subject; that Satish said that he was not in a position to say whether he could sell the taluk : that he, the witness, then brought Satish to the Maharaja's house in Calcutta; that Satish there gave no final answer but said that he would have to consult one or two persons who had interest in the property purchased. (He did not mention the names); that he, the witness, pressed him very much in the matter; that Satish then took him to the house of another person named Chatterji; that Satish entered the house, remained there for some time while the witness remained outside in the carriage; that after an interval Satish returned and said he could not sell the property; that Chatterji was unwilling to part with it. (The full name of Akshoy is Akshoy Kumar Chatterji.)

83. The Maharaja Sir Pradyot Kumar. Tagore was examined on commission. He says he knows the villages of Atpur and Mulapore; that he is a Zemindar; that after the auction he heard of the sale; that had he known before it took place that it was about to take place he would have attempted to purchase it. He heard from his amlas that the value of the property was from Rs. 25,000 to Rs. 30,000. He heard the name of the person who purchased the property at the auction. He tried to purchase it from him and sent word of that to Satish by Rajindra, the officer of his Debottar estate. After that interview, Satish had a talk with witness at his, the witness's own house. The witness was asked "what did he say to your proposal ?" and he replied : Satish, said he had a partner named Akshoy, and other partners too, and that he was unable to say anything without consulting them; that conversation took place in August or the beginning of September, 1915, as well as he could recollect. The negotiations progressed no further; his officer told him it would not come off. The witness said he had not seen Satish before; he had no personal knowledge of him. The witness was asked to describe the man he spoke to : he said he was about 45 years of age, rather stout, of dark complexion, stood rather uncomfortably, and spoke to him, the witness, in Bengali.

84. A number of quite irrelevant questions were put to the Maharaja which may be passed by.

85. The next witness is AshutoshBhattacharji. He was examined on the 7th March, 1917. He states that he is only Superintendent of the Raja KishoriLalGossain of Serampur; that his head office is at Serampur; that his master was a member of the Executive Council of the Governor of Bengal; that he himself is an undergraduate, an Honorary Magistrate of the Bhatpara Bench, and a Municipal Commissioner of

Bhatpara Municipality; that he has served as Superintendent for twelve years. He knows Atpur. He knows the taluk 2402; that he knew of the sale of it in Baisakh (from middle of April to middle of May, 1915) Had he known of it before it took place he would have tried to acquire it for his master; that on his master's behalf he tried to purchase it several times from Satish.

86. First he sent MokhtarTarpaddiDutta to the knowledge of his master, on two or three occasions to Satish. After that he witness, went in the middle of May. He said the case for setting aside the auction sale was then pending before the commissioner, and that he must consult Akshoy. The witness then went to the house of AkshoyChatterji on three or four occasions in July or August. He went to Satish for the last time in October, 1915. After the disposal of the case he, Satish, said he could sell the property for Rs. 50,000. The witness says he then offered him Rs. 25,000.

87. On cross-examination, the witness said that he, Satish, had a mind to sell as far as he understood him. He said he stayed at Satish's house about ten or fifteen minutes; that he did not know Akshoy before he went to his house in connection with this matter; that Satish gave him Akshoy's address; that he did not do or say anything to induce Satish to sell the property. On the first day he, the witness, saw Akshoy he expressed his willingness to sell the property. He saw him when the appeal before the Commissioner was over and he then demanded Rs. 50,000.

88. The learned Subordinate Judge has criticisedunfavourably the Maharaja's evidence, but he bases his criticism on the most surprising error : "He says the conversation with the Maharaja took place, according to Rajendra, in Jaishta, i. e., which means from the middle of May to the middle of June; that there was an appeal to the Commissioner pending, which was disposed of on the 1st July; that the present suit was instituted on the 18th August, 1915; that Satish is an astute man of business ; that it is highly improbable that he would make such admissions of fraud on his part when in the appeal to the Commissioner his complicity with defendants Nos. 2 and 3 was distinctly alleged and the matter was being fought out between them. It has not been shown to this Board that the charge of fraud was made before or could be entertained by the Commissioner. He gave no decision whatever upon such a charge if made.

89. His decision is entirely confined to the irregularity of the sale, but it is strange that the learned Subordinate Judge did not take the trouble to verify his dates before he made such a charge as this against such a person as this Maharaja, based entirely on

the assumed fact that the Commissioner's judgment was delivered on the 1st July.

90. Had he done so, he would have found that the Commissioner delivered his judgment not on the 1st July 1915, as he assumes, but one month earlier, namely, the 1st June, 1915. The criticism based upon this blunder therefore falls to the ground.

91. Now, if Satish and Akshoy had admitted that they had had these interviews with the persons named, but that these latter had mistaken what they said, or that they were so pressed to sell, that they said what they were alleged to have said as an excuse to get rid of the pressure, there might be something to say on their behalf. But they do nothing of the kind; they say these interviews never took place; that the whole thing is a myth, a work, it is to be supposed, of the perverted and diseased imagination of these three witnesses.

92. Their Lordships are as unable as the High Court are to take that view. They think, on the contrary, that these three witnesses are reliable and their evidence most convincing. They believe that if this large sum of Rs. 25,000 or Rs. 30,000 was within the reach of this needy man Satish, then in debt to the extent of Rs. 15,000 to Rs. 18,000, he would have eagerly grasped at and gladly sold the property he purchased in order to procure it.

93. The fact that he did not do this can only be accounted for on the assumption that he was not the absolute owner of this property, free to dispose of it as he might, but that his action was dominated and controlled, by the wealthy co-owner he named to whom gains of Rs. 10,000, or Rs. 20,000, had not such a strong attraction. Their Lordships are therefore of opinion that the respondent - plaintiffs have established the cause of action in which they sued, and that the appeal fails. The appeal having been dismissed, it is not necessary to discuss the matter further, as there is no cross-appeal. The respondents are apparently content with the decree which has been pronounced by the High Court, and as their Lordships think it does substantial justice between the parties in the circumstances of the case, they will merely humbly advise His Majesty that the appeal be dismissed with costs.

Appeal dismissed.