

CALCUTTA HIGH COURT

Gouranga Sundar Das Gupta

Vs.

Rakhal Majhi

A.F.A.D. Nos. 659 to 720 of 1947

(R.P. Mookerjee, J.)

30.06.1950

JUDGMENT

R.P. Mookerjee, J.

1. Only one question of law has been raised in this batch of 62 appeals. The admitted facts are Touji No. 2409 of the Midnapore Collectorate was registered in the records of the Collectorate under two separate accounts. Separate account No. 1 was shown as liable for Rs. 1446-4-1 as the share of revenue payable and the residuary share Rs. 1446-11-3. The two separate accounts had been opened when the two shares were held by two sets of co-sharers. In course of time these two shares came to be owned by the same person but in the records of the collectorate the separate accounts were continued to be maintained. Both the separate accounts fell into arrears. A notice under section 6, Revenue Sales Act, was issued, which is Ex. 6a in this case. The notice included description of the two separate accounts. On 24-6-1939, the said two separate accounts were put up to sale for the realization of the total arrears of revenue. From the bid sheet, (Ex. I) it appears that bids were offered for the two separate accounts together. Gunendra Nath Mitra became the auction-purchaser. The defense case is that after the purchase by Gunendra a notice of annulment was issued and the putni which had been in existence at the time of the revenue sale was annulled.

2. The only point now raised in these appeals is that as there were two separate accounts in respect of the Touji, was the sale of both the separate accounts together a sale of the entire Touji entitling the purchaser to annul all incumbrances ?

3. It is well known that before the Revenue Sales Act was passed in 1859 estates were being put up to sale for arrears irrespective of the question whether the majority of the co-sharers had deposited their shares of the revenue or whether the amount due was large or small. The co-sharers who had paid their share within the due date were affected seriously by such sales. Provision, therefore, was made in 1859 for affording protection to the co-sharers who were willing to pay and had paid their share of the revenue. On the application of the parties the Collector began to keep a record of separate accounts in the names of the different co-sharers. The liability of the entire estate for the total amount of revenue was not in any way affected by

this arrangement. The only privilege given was that if the co-sharers had got separate accounts opened in the Collectorate the revenue apportioned for the particular co-sharers would be receivable by the Collector. At the initial stage the shares belonging to such of the co-sharers who duly paid the amount allotted in their share would not be put up to sale even if there be a default on the part of one or more of the other co-sharers. Only the defaulting separate accounts would be put up to sale in the first instance. If the Collector found that the total amount of the revenue in arrears was not realizable from the sale, he would thereupon give notice that the entire estate would be put up to sale. Sections 13 and 14, Revenue Sales Act, have to be referred to in this connection.

4. It is not necessary for me to enter into a detailed consideration as to what was meant by the closing of separate accounts as was referred to by the Judicial Committee in the case of *Mutasaddi Mian v. Mahomed Idris*¹, In *Narendra Nath Roy v. Midnapore Zemindary Co. Ltd.*², Mitter J. has clearly analysed the position. Closing of the separate accounts, after the failure of the Collector, when a defaulting separate account is put up to sale does not mean the actual closing of all the accounts so far as the collectorate records are concerned; it merely meant that the accounts as kept under each one of the separate accounts in the Touji ledger will be added up to find out what is the total amount actually due for the entire estate.

5. In such accounting credit is to be given for the excess amount which may be in deposit in a separate account which is not in arrears. The separate accounts are not, according to Mitter J., wiped away by the steps taken by the Collector when a separated share is put up to sale under Section 14, Bengal Revenue Sales Act.

6. In *Rameswar Das v. Byomhesh Samanta*³, a Division Bench of this Court has gone to the extreme length in laying down that if after a closing of the separate accounts the revenue sale does not take place or such "closing of accounts" becomes abortive, the existence of those separate accounts is not affected and such separate accounts continue as before. It was held that if the sale does not take place under Section 14 of the Act, the separate accounts still exist in spite of an order made by the Collector for the closing of separate accounts for the purpose of putting up to sale the entire estate for the realization of arrears.

7. In the present case there was no order for the closing of the separate accounts before the sale in question had taken place. As a matter of fact there was no attempt to sell each one of the two separate accounts as required by the statute. If there be a joint sale of different separate accounts without following the procedure laid down in Sections 13 and 14 of the Act, does such a sale pass title or has the effect of a revenue sale under Section 37 of the Act entitling the purchaser to annul his incumbrances? In *Sakina Khatoon v. Khirot Chandra*⁴, Edgley and Biswas JJ., held that such a joint sale of separate accounts was illegal. In *Sabita Sikiar v. Sudhir Kumar*⁵, Biswas J. sitting singly came to the conclusion that the sale of both the separate shares, without first putting up to sale the separate accounts separately was not a sale without jurisdiction. It was an illegal sale no doubt but open to challenge only in the manner laid down in Section 83 of the said Act. Reliance was placed in this connection on the observations of the Judicial Committee in *Gobind Lal v. Ramjanam Misser*⁶, and *Balkissen Das v. Simpson*⁷.

¹19 C. W. N. 764 : (AIR 1915 PC 177)

³AIR 1950 Cal186

⁵50 C. W. N. 419 : (AIR 1946 Cal 367)

²44 C. w. n. 38 : (AIR 1940 Cal115)

⁴46 C. W. N 73. AIR 1942 Cal 173

⁶20 i. A. 165: (21 Cal. 70 P.C)

⁷25 i a. 151 : (25 Cal. 833 P.C)

8. The particular sale which is now in question before me was the subject-matter of two appeals in this Court previously. In one of those namely in *Satish Chandra v Sudhir Krishna*⁸, Nasim Ali and Pal JJ observed at p. 542. In our opinion the learned Subordinate Judge fell into an error as to the effect of the Revenue sale of the Touzi held in this case. We have examined all the relevant documents relating to this sale and in our opinion it was a sale of the shares of the Touzi under Section 13 of the Revenue Sale Law and consequently by it under Section 54 of the Revenue Sale Law the purchaser failed to acquire any rights which were not possessed by the previous owners of the Touz. Such a purchaser did not acquire any right to annul the tenure."

9. The effect of this particular revenue sale was again considered in *Gunendra Nath v. Bimal Kumar*⁹, It was observed that though the two shares which were the subject-matter of the two separate accounts came to be held by the same person, there was no merger of the shares and the entire estate did not pass into the hands of the purchaser as a single entity, either in fact or in law and the latter did not become entitled to the rights provided for by section 37 of the Revenue Sales Law. It was further observed that where there are separate accounts, the Collector must, under section 13 of the Act, close the separate accounts before putting up to sale the estate as a whole, and separate accounts once created, can disappear only when they have been so closed up.

10. The observations in the two Bench decisions above mentioned have not the force of res judicata in the present case now before me, and that was the position taken up by both the parties. It was however contended that they are authorities binding on me. I do not see any escape from that conclusion. It is therefore not necessary to consider how far the second proposition as laid down in the Bench decision of *Gunendra Nath v. Bimal Kumar*¹⁰, is well founded. The reference made to the fact of non-closure of separate accounts is to me not an important criterion. As explained in the decisions already referred to the closing of accounts is for the limited purpose of ascertaining the total amount of arrears due and not a factual closing of the separate accounts. That this aspect of the question was not fully considered was probably due to the fact that on the first point the Court had come to a decision which was sufficient for the disposal of the appeal. This Bench as constituted, must accept the Bench decisions already stated above.

11. It must therefore be held for the limited purpose of the periods now in suit in the present cases that by the revenue sale the entire touzi consisting of the two separate accounts was not sold. The corollary thereto is that the purchaser had not the right to annul the incumbrances The plaintiff has therefore still the right to claim rent from the defendant tenants.

12. The appeals are accordingly allowed. The judgments and decrees of the Courts below are set aside. The plaintiff's claims for rent are allowed and the suits decreed. The plaintiff will be entitled to his costs in this Court. The hearing fee is assessed at five gold mohurs for all the appeals taken together.

13. 7-8-1950. Leave to appeal under clause 15 of the Letters Patent is prayed for and is

⁸46 C. W. n. 540 : (AIR 1942 Calcutta 429) ¹⁰53 C. W. N. 428

⁹53 C. W. n. 428

refused.

Appeals allowed.