Parmanand And Others vs Ganpatrao And Others on 12 September, 1962

PETITIONER:
PARMANAND AND OTHERS

Vs.

RESPONDENT:
GANPATRAO AND OTHERS

DATE OF JUDGMENT:
12/09/1962

BENCH:

ACT:
Revenue Sale--Validity of--C.P. Land Revenue Act, 1947 (C.P. 2 of 1917), s. 149.

HEADNOTE:
The appellants are Lambardars of Mahal No.2 of Mouza Gujarkhedi, and they held therein an undivided share of As. -/II /- and as they were found in arrears of land revenue to the extent of Rs. 730/13/-, the property was sold for Rs. 600/-but the sale proclamation recited the amount of arrears due as Rs. 1345-9-0 and that the properties were being sold for
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recovering that amount. It was contended by the appellants, that it was open to them to have the sale set aside in the Civil Court on the ground that the arrear for which the property was sold was not due. The trial court dismissed the suit on the ground that the suit did not lie and the High Court affirmed the decision.
Held, that s. 149 (2) of the Act was plain and unambiguous and that if the arrear in respect of which the sale was held was not due it gave a right to the owner of the property to have the sale set aside in a Civil Court. The fact that subsequent to the sale proclamation but on the date of the sale further amounts towards land revenue had become due was not material, the scheme of the Act being that in respect of each specific arrear separate proceedings had to be taken.
Held, further, that mistakes and irregularities contemplated by the Act which would not furnish grounds for invalidating and setting aside the sale were of a different kind and from the scheme of the Act it is clear that a sale for an arrear that was not due was put in a separate category.
Rewa Mahten v. Ram Kishan Singh (1886) L.R. 13 I.A. 106 and

Ram Prosad Choudhury v. Ram Jadu Lahiri, (1936) 40 C.W.N. 1054, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No, 110 of 1960. Appeal by special leave from the judgment and decree dated April 13, 1956, of the former Nagpur High Court in F.A. No. 99 of 1947.

Naunit lal, for the appellants.

B. A. Masodkar, B. D. Najbile and Ganpat Rai, for the respondents.

1962. September 12. The judgment of the Court was delivered by GAJENDRAGADKAR, J.-This appeal by special leave raises a short question about the construction of section 149 (2) of the C. P.-Land Revenue Act, 1917 (No II of 1917) (hereinafter called the Act). The validity of a revenue sale of their properties held on February 27, 1941 under section 128(f) of the Act was challenged by the appellants by their suit 30 .

filed in the Court of the Additional judge, Nagpur on November 12, 1946. Ganpatrao Vishwanathji Deshmukh who had purchased the properties at the said auction sale was impleaded as defendant No. 1 to the said suit. During the pendency of the litigation, the said Ganpatrao has died and his heirs have been brought on the record. They will be referred to as respondent No. 1 in the course of this judgment. The appellants challenged the impugned sale on five different grounds. They alleged that the sale was without jurisdiction; that as the final bid was not accepted by the Dy. Commissioner, it was invalid; that as the sale was brought about fraudulently by respondent No. 1 in collusion with the Revenue Clerk, it was invalid; that as the Commissioner was not competent to confirm the sale on November 13 1945, it was invalid; and that the sale could not be held validly for the recovery of Rs. 1,354/9/- which was shown in the proclamation of sale as the arrear for which the property was put to sale. The trial court rejected all the contentions raised by the appellants in impeaching the validity of the sale and so, the relief claimed by the appellants against respondent No. 1 by way of injunction restraining him from recovering possession of the property and disturbing the appellants' possession thereof was rejected.

The appellants then preferred an appeal in the Nagpur High Court. The High Court has confirmed the findings of the trial court and accordingly, the appeal has been dismissed. It is against this decree that the appellants have come to this Court by special leave; and the only point which has been raised on their behalf by Mr. Naunit Lal is that the view taken by the courts below that the impugned sale could not be effectively challenged by the appellants under s.149 (2) is not justified on a fair and reasonable construction of the said provisions.

The material facts leading to this point are very few, and they are not in dispute. The appellants are Lambardars of Mahal No. 2 of Mouza Gujarkhedi, Tehsil Saoner, District Nagpur, and they held therein an undivided interest of As. /11/- . On or about October 4, 1940, they were found to be in

arrears of land revenue to the extent of Rs. 730/13/-in respect of the suspended Rabi kist of 1938-39 and the Rabi kist of 1939-40. The Tehsildar of Saoner .made a report on October 4, 1940 to the Dy. Commissioner that the said arrears were due from the appellants and asked for sanction to sell by auction the property in suit. 'Along with this report, a draft of the sale proclamation containing the relevant details was also submitted for the signature of the S.D.O. in case the Dy. Commissioner sanctioned the sale. The S.D.O. forwarded the said report to the Dy. Commissioner who accorded sanction to the proposal of the Tehsildar on December 17, 1940. Thereafter, on December 23, 1940. the S.D.O. signed the said proclamation and on getting the said documents back, the Tehsildar ordered on January 7, 1941 that the sale proclamation should be published and that the sale should be held on February 26, 1941. On that date, the sale was adjourned to February 27, 1941 for want of adequate bids. On the next day the sale was held and the property was sold to respondent No. 1 for Rs. 600/-. Ultimately, the said sale was confirmed. It is common ground that though at the relevant time, arrears due from the appellants amounted only to Rs. 730/13/-, in the Parchanama the said amount was shown as Rs. 1,354/9/- and the property in fact was sold to recover the said amount of arrears under s. 128(f) of the Act. The appellants' contention is that the arrear, Rs. 1,354/9/-, for which his property has been sold under s. 128(f) was not due; what was due was the lesser amount of, Rs. 730/13/- and so, the sale in question is invalid under s. 149 (2) of the Act.

In dealing with this point, it is necessary to refer to the relevant provisions of the Act. Chapter X of the Act deals with the collection of land revenue, and it consists of sections 122 to 160. Section 124 confers power on the State Government to regulate payment of sums payable under the Act and provides for the number and amount of the instalments, and the time, place and manner of payment of any sum payable under a settlement or sub- settlement, or otherwise under an assessment made under this Act. Sub-section (2) of s. 124 requires that unless the State Government otherwise directs, all such payments shall be made as prescribed under sub-s. (1). A notice of demand can be issued by Tehsildar or Naib Tehsildar under s. 127 and it may be served on any defaulter before the issue of any process under s. 128 for the recovery of an arrear. Section 128 provides for the process for recovery of an arrear and it prescribes that an arrear payable to Government may be recovered, inter alia,...(f) by selling such estate, mahal or land, or the share or land of any co- sharer who has not paid the portion of the land revenue which, as between him and the other co-sharers, is payable by him. Section 131 prescribes the procedure for attachment and sale of movables and attachment of immovable property.. Then s. 132 provides for holding enquiry into claims of third persons in respect of property attached or proceeded against. Section 138 (1) provides that the purchaser of any estate, mahal, share or land sold for arrears of land revenue due in respect thereof shall acquire it free of all encumbrances imposed on it, and all grants and contracts. made in respect of it, by any person other than the purchaser. Sub-sections (2), (3) and (4) make other provisions, but it is unnecessary to refer to them. Section 143 lays down that if the arrear in respect of which the property is to be sold is paid at any time before the lot is knocked down, the sale shall be stayed. Section 145 provides for application to set aside sale on deposit of arrear, and s. 146 provides for application to set aside sale for irregularity. Under s. 148 it is provided that on the expiry of 30 days from the date of sale if no application has been made under section 145 or 146 or no claim has been made under s. 151, or if such application or claim has been made. and rejected, the Dy. Commissioner shall pass an order confirming the sale. Section 151 refers to claims of pre-emptions. That takes us to section 149. Section reads as follows :

> "(1) if no application under section 146 is made within the time allowed therefor, all claims on the grounds of irregularity or mistake shall be barred.
>
> (2) Nothing in sub-section (1) shall bar the institution of a suit in the Civil Court to set aside a sale on the ground of fraud or on the ground that the arrear for which the property is sold is not due."

It would thus be seen that the scheme of the relevant provisions of the Act in relation to revenue sales appears to be self-contained. The revenue process for recovering arrears begins with the report as to the arrears and ends with the confirmation of sale. Provision is made for the examination of claims of third parties as well as for setting aside sales on account of deposit or on account of irregularities committed in conducting the sales., It is in the light of this self-contained scheme that s. 149 (1) provides that if no application under s. 146 is made within the time prescribed, all claims on the grounds of irregularity or mistake shall be barred. In other. words'. the effect of this provision is that if a party aggrieved by a revenue sale of his property wants to challenge the validity of the said sale on grounds of irregularity or mistake, the Act has provided a remedy for him by s.146 and it he fails to avail himself of that remedy, it would not be open to him to challenge the impugned sale on the said grounds by a separate suit. The grounds of irregularity or mistake must be urged by an application made under s. 146 and if no such application is made, then the party is precluded from taking the said grounds otherwise. Thus far there is no difficulty or dispute.

Sub-section (2) of s. 149 provides an exception to ss. (1), and it says that the institution of a suit would not be barred in a Civil Court to set aside 'a sale on two grounds; if the sale is challenged on the ground of fraud, a suit will lie; similarly, if a sale is challenged on the ground that the arrear for which the property is sold is not due, a suit will lie. The effect of this provision is that if fraud is proved in regard to a revenue sale, a suit will lie and the sale will be set aside; similarly, if it is shown that the arrear for which the property is sold was not due, a suit will lie and the sale will be set aside. There is no difficulty or dispute about this position also. The question on which the parties are at issue before us is in regard to the interpretation of the clause "the arrear for which the property is sold." It has been held by the High Court that what this clause requires is not that the arrear for which the property is sold should be stated with meticulous accuracy, if a mistake is made in showing the actual amount of arrear due from the defaulter for which the property is sold, that mistake would not render the sale invalid; it would be a mistake within the meaning of ss.(1) and so, to cases of that kind sub-section (2) will not apply. On the other hand, Mr. Naunit Lal contends that the clause "the arrear for which the property is sold" is plain and unambiguous. In considering the question as to whether this clause is attracted or not, one has to look at the proclamation of sale and enquire whether the amount shown as arrears due from the defaulter was in fact due or not. If the said amount was not due, the clause will apply notwithstanding the fact that a lesser amount may have been due from the said defaulter.

In construing s. 149(2) it is relevant to remember that the provision in question is made in relation to revenue sales and there is no doubt that the revenue sales are authorised to be held under the summary procedure prescribed by the relevant sections of the Act, and so, it would not be unreasonable to construe these provisions strictly. That is why we are not inclined to accept the view

that in interpreting the relevant clause, we should assume that the Legislature did not expect the authorities to specify the arrear for which the property is sold with meticulous care. If the defaulter's property is being sold under revenue sale and the object of issuing the proclamation is to show for what arrear it is being sold, it is, we think, fair to assume that the said arrear must be stated with absolute accuracy. It would not be enough to say that some arrear was due and so, the sale should be upheld though it was purported to be held for recovery of a much larger arrear.

Nor is this consideration purely academic. As we have seen, s. 143 provides that if the arrear in respect of which the property is to be sold is paid before the lot is knocked down, the sale shall be stayed. In the present case, if the arrear had been properly shown at Rs. 730113/-, it is theoretically possible that the appellants may have been in a position to deposit this amount before the lot was knocked down and the sale would have been stayed. Since the arrear was shown to be much larger, it is theoretically possible that the appellants could not make a successful attempt to deposit the said amount. Now, in working out the provisions of s. 143, there should be no difficulty in determining the amount which the defaulter has to deposit to avoid the revenue sale. The arrear in question must be correctly stated in the proclamation so that everybody concerned knows the exact amount for which the revenue sale is held. That is another consideration which supports the construction for which the appellants contend.

Mr. Masodkar for respondent No. 1 argued that the construction for which the appellants contend is mechanical and it may lead to anomalies. In support of this argument, he took the illustration of a case where the amount of arrears is accurately shown in the proclamation, but after the proclamation is issued, a part of it is paid by the defaulter;-(as in fact Rs. 291/- were deposited by the appellants in the present case) the contention is that in such a case, if the original amount ,of arrears continues to be shown in the proclamation, the sale would be invalid on the construction suggested by the appellants. We are not impressed by this argument. Our attention has not been drawn to any specific provision of the Act under which a partial payment of the arrear due is allowed +lo be made by the defaulter. If such a payment is made, it may, at best be treated as deposited on account, and no deduction would be made from the arrear notified to be due from him in the proclamation at that stage. The only provision which has been cited before us in that behalf is s. 143 and s. 143 expressly provides for the payment of the whole of the arrear due and lays down that on such payment before the lot is knocked down, the sale shall be stayed. Therefore, the complication sought to be introduced by Mr. Masodkar by taking a hypothetical case of a part payment of the arrears due from the defaulter, does not affect the construction of s. 149(2).

It is then argued that the impugned sale cannot be said to be irregular in the present case, because on the date when it was, actually held, the amount of Rs. 1,354 /9/- was in fact due from the appellants as arrears. It is common ground that after the proclamation was issued, a further amount of arrears became due from the appellants and on the date of the sale, the total amount came to be Rs. 1,354/9/-. In our opinion, arrears accumulating. after an order for sale has been passed and the proclamation in that behalf has been issued, cannot come into the calculation while construing s.149 (2). Every arrear for which the sale is ordered must be specifically dealt with as provided by the Act. It is not open to the authorities to deal with a specific arrear as prescribed by the Act and to pass an order for sale of the defaulter's property on the basis of that arrear and then add to it subsequently

accruing arrears without following the procedure prescribed in that behalf. Once the amount of arrear is determined and sale is ordered by reference to it, it is that amount which must be shown in the proclamation and it is for that amount of arrear for which the property must be sold. That, in our opinion, is clearly the effect of the relevant clause in s. 149 (2). We must, therefore, hold that the High Court was in error in coming to the conclusion that the sale of the appellants' property on the 27th February, 1941 was valid. We are satisfied that the arrear for which the appellants' property was sold was not due within the meaning of s.149 (2), and so, the sale must be set aside.

In support of his argument that the impugned sale cannot be held to be invalid, Mr. Masodkar relied on a decision of the Privy Council in Rewa Mahton v. Ram Kishen Singh(1). In that case, the Privy Council was dealing with a question which had reference to the true construction of s. 246 of the Civil Procedure Code of 1877 (Act X of 1877). The said section had provided that if cross decrees between the same parties and for the payment of money be produced in the Court, execution shall be taken out only by the party who holds the decree for the larger sum, and for so much only as remains after deducting the smaller sum. It appears that contrary to the provisions of this section, an auction sale was held and when the title of the auction-purchaser was challenged, it became necessary to consider that the effect of noncompliance with the provisions of s. 246 would be on the title of the auction-purchaser. The Privy Council held that a purchaser under a sale in execution is not bound to inquire whether the judgment debtor had a cross judgment of a higher amount such as would have rendered the order for execution incorrect. If the Court has jurisdiction, such purchaser is no more bound to inquire into the correctness of an (1) (1886) L. R. 13 I. A. 106.

order for execution than he is as to the correctness of the judgment upon which execution issues. In other words, the effect of this decision is that if in contravention of the provisions of s. 246 an executing Court orders a sale to be held, the auction-purchaser gets a good title notwithstanding non-compliance with s. 246. We do not see how this case can assist Mr. Masodkar in the present appeal. The decision turned upon the construction of s. 246. But the present dispute has to be decided on a construction of s. 149 (2). It is wellknown that execution sales held under the Code of Civil Procedure can be challenged only in the manner prescribed and for the reasons specified, say, for instance, by O. XXI r. 89, 90 and 91. The fact that certain irregularities committed during the conduct of execution sales would not render the sales invalid, flows from the relevant provisions of the Code and so, it would not be reasonable to invoke the assistance of the decisions dealing with irregularities committed in execution sales in support of the argument that a revenue sale held under s. 128 (f) should be judged by the same principles. The question as to whether the revenue sale is valid or not must obviously be determined in the light of the relevant provisions of the Act and that again takes us to the construction of s. 149 (2).

Mr. Masodkar had also relied on the decision of the Calcutta High Court in Ram Prosad Choudhury v. Ram Jadu Lahiri (1)in support of his argument that a revenue sale held under s. 128 (f) of the Act would not be rendered invalid merely because the amount of arrears shown in the proclamation is not accurate. In the case of Ram Prosad Choudhury, the sale had been held under the provisions of the Bengal Land Revenue Sales Act (Act XI of 1859). Under s. 5 of the said Act, notice had to be issued before the sale could be held. In the notice. issued prior to the sale had been shown a sum which had then not become due as an arrear along with other sums (1) (1936) 40 C.W.N. 1054.

which had become arrears, and the subsequent sale was held on the footing of the total amount thus shown being the arrears due. It was urged that the sale was invalid because of the irregularity committed in the issue of the notice under s. 5. This argument was rejected and it was held that despite the said irregularity, the sale was valid. Now, in appreciating the effect of this decision' it is necessary to refer to the provisions of s. 33 of the said Act under which the sale was challenged. We have already referred to the fact that s. 5 required a notice to be issued prior to the sale. The notice provided for by this section had to specify the nature and amount of arrear or demand, and the latest date on which payment thereof shall be received. Section 33 provides that no sale for arrears of revenue shall be annulled, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of'; with the rest of the section we are not concerned. The argument which was urged in the case of Ram Prosad Choudhury was that the notice under s. 5 having been irregularly issued, the sale should be deemed to have been held contrary to the provisions of the said Act, and this argument was not accepted. It would be noticed that s. 33 justifies a claim for annulling the sale only if two conditions are satisfied; that the sale should have been made contrary to the provisions of the Act and that the plaintiff must show that he has sustained substantial injury by reason of the irregularity complained of. It is in the context of these requirements that the Calcutta High Court held that the inclusion of an amount in the notice which had not become an arrear on the date of the notice did not render the impugned sale invalid. We do not think that this decision can assist us in interpreting s. 149 (2) with which we are concerned. The scope and effect of the relevant provisions of s. 149(2) are not at all similar to the scope and effect of s.33 of the Bengal Act. Therefore, we are not inclined to accept Mr. Masodkar's argument that the defect in the sale on which the appellants rely would not render the sale invalid.

The result is, the appeal is allowed, the decree passed by the High Court is set aside and the appellants' suit decreed, There would be no order as to cost throughout. Appeal allowed.