

# **Radha Kishan vs Ram Nagar Co-Operative Society Through ... on 11 May, 1950**

**Equivalent citations: AIR1951ALL341, AIR 1951 ALLAHABAD 341**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal**

## **JUDGMENT**

Malik, C.J.

1. This appeal was referred to a Full Bench by a Division Bench of this Court on 11th April 1945. When the case came up before a Full Bench of this Court on 17th April 1946, two issues were remitted to the lower Court for findings. They were as follows :

"(1) What were the terms of the requisition sent by the Registrar Co-operative Societies to the Collector under Section 42(4A), Co-operative Societies Act, and on what date was it received by the Collector ? and (2) What were the steps taken or processes enforced by the Collector upon the receipt of the said requisition up to the date of the institution of the suit?"

The learned District Judge of Agra has recorded the findings on the two issues and has sent up the papers to this Court.

2. The facts of the case are that money was due to Ramnagar Co-operative Society from Phool Chand, defendant 2. The Society went into liquidation and the Registrar of the Cooperative Societies sent a requisition to the Collector on 30th March 1937, to realise a sum of Rs. 639/13 due from Phool Chand. In this requisition, it was mentioned that the property, from which the money could be recovered, was situate in village Ram Nagar, Tehsil Etmadpur, District Agra, and was "one cart, two bullocks and cultivation". The sum of Rs. 639-13-0 included the money due from Phool Chand, as well as his share of the costs of liquidation. Under Section 42(4A), Co-operative Societies Act (No. XI [11] of 1912) as amended by Act III [3] of 1919, it is provided that:

"Any sum ordered under this section to be recovered as a contribution to the assists of the Society or as costs of liquidation may be recovered, on a requisition being made in this behalf to the Collector by the Registrar of Co-operative Societies, in the same manner as arrears of land revenue."

It is admitted that the amount due from Phool Chand could be recovered from him as arrears of land revenue.

3. We have no information what happened to the two bullocks, the cart and the cultivation mentioned in the requisition, but we know that the Collector issued a process against a house no. 210, situated in the abadi of mouza Ramnagar Khandauli, Pergana Etmadpur, District Agra. The plaintiff thereupon filed the suit, out of which this appeal has arisen, on 13th September 1941 for the following relief:

"(a) It be declared that the house detailed below at the foot of the plaint is not liable to sale by the defendant in the course of recovery of his dues from defendant 2 and the house belongs to the plaintiff."

During the pendency of the suit, the house in question was sold on some date in July 1942. We are not, however, concerned with this sale as it was held during the pendency of the suit.

4. Phool Chand, defendant 2 did not file a written statement and the suit against him proceeded ex parte. Defendant 1 contested the suit on the merits that the plaintiff was not the owner of the house and also on the ground that Section 233 (M), Land Revenue Act barred the jurisdiction of the civil Courts.

5. The suit came up for decision before the Civil and Sessions Judge of Agra who, on 9th of January 1942, dismissed it on the preliminary ground that the suit was barred by Section 233 (M), Land Revenue Act (NO. iII [3] of 1901)

6. This decision was upheld by the learned District Judge by his order dated 23rd February 1943.

7. The issue relating to title of the plaintiff, which was issue No. 4, was in these terms:

"Is the plaintiff the owner of the house in suit"?

This issue was not decided by either of the lower Courts.

8. The point for determination, therefore, is whether the suit is barred by the provision of Section 233 (m), Land Revenue Act. That section is as follows:

"No person shall institute any suit or other proceedings in the Civil Court with respect to any of the following matters : . . . ."

(m) claims connected with or arising out of, the collection of revenue (other than claims under Section 183), or any process enforced on account of any arrear of revenue or, on account of any sum which is by this or any other Act realisable as revenue."

Great reliance is placed on the words "no person" and the words "claims connected with or arising out of" and it is urged that the words are wide enough to include even a third party against whose property the process might have been issued even though the process might have been issued under a mistaken belief that the property belonged to the defaulter. If, by reason of the language of the section, we are compelled to hold that the legislature must be deemed to have intended that a third party, whose property is being proceeded against under a mistaken belief that it belongs to the debtor, has no right to seek redress in a civil Court, the Court will have to decide in favour of the objection, but the language compelling such a decision would have to be so clear that it is not capable of any other interpretation. One of the tests that should be applied is whether in such cases the legislature has made any other provision for redress. If it has not, the conclusion is almost irresistible that it was not the intention of the legislature to take away all right of redress of innocent third parties.

9. We have carefully gone through the chapter (chap, VIII, U. P. Act III [3] of 1901) relating to realisation of land revenue and we can find no provision therein which can apply to an innocent third party, though it provides enough safeguards for the defaulter himself. Section 142, Agra and Oudh Land Revenue Act, defines a defaulter as a person responsible for payment of land revenue which has already fallen due, no matter whether the amount is claimable from him as a co-sharer or as a lumbardar. Under Section 147 of this Act, a writ of demand is issued against the defaulter to pay the amount. If he does not pay then under Section 148 he can be arrested and put in a civil prison for a period of fifteen days. Even if that method does not succeed, the Collector can proceed against his movable property under Section 149. Failing realisation from his movable property, the Collector can proceed against the immovable property; first against the revenue paying area, share patti or mahal in respect of which the arrear is due and under Section 150 he has the right to attach it and take it under his own management. If the arrears cannot be realised even that way then the specific area, patti or mahal, in respect of which such arrear is due, can be sold with the previous sanction of the Provincial Government. On sale of such land, all previous encumbrances on it cease under Section 161. If even that is not enough, it is only then that the Collector has the power to proceed against other property of the defaulter under Section 162. Proviso (1) to Section 162 lays down that no interest, save that of the defaulter alone, shall be affected by such process, and when such property is sold the provisions of Section 161 shall not apply to such a sale. Before the sale is held, the defaulter may pay under Section 166 and in that case the property shall not be sold. Even after the sale, within thirty days thereof, if the whole of the amount due along with five per cent, of the purchase money is paid the sale has to be set aside and if no such deposit is made under Section 172, or no objection is filed to set aside the sale on the ground of irregularity under Section 173, on the expiry of thirty days the sale becomes final. If an objection is filed under Section 173, and is dismissed that order of the Commissioner is final and under Section 177 the purchaser is put in possession. Section 183 provides for payment under protest by the defaulter. After having paid the amount under protest the defaulter has been given the right under this section to file a suit in the civil Court. The above summary would show that a defaulter against whom a process has been issued can pay the amount under protest and have his liability determined in the civil Court. It would further appear that after every other mode of realisation has failed it is only then that the other property of the defaulter can be proceeded against and even after the sale he can have the sale set aside by making payment or by depositing the money under protest or on the ground of

irregularity or mistake in conducting the sale.

10. Mr. Shanker Sahai Varma has drawn our attention to Section 197, Agra and Oudh Land Revenue Act, which lays down how a proclamation has to be issued and has urged that, as a proclamation has to be issued before the property is sold, it is open to third parties to come forward and object, but he has to admit that there is no provision in the Land Revenue Act similar to Order 21, Rule 58, Civil P. C., and though the Chapter purports to be exhaustive, we can find no provision for an objection by a third party.

11. It is urged that Section 173 is the provision that applies to third parties, but s. 173 becomes applicable only after the sale and I do not feel satisfied that even Section 173 was intended to include a third party. Section 173 provides for objections after the property has been sold and it is surprising that if this section is intended to apply to a third party, who is stranger to the proceedings he should have to wait till the sale before he can file his objection and further that if he does file an objection and the objection is dismissed by the Commissioner, the order should become final and take away all his rights to the property. Even an order of a civil Court under Order 21, Rule 58, Civil P. C., can be challenged by a suit under Order 21, Rule 63, Civil P. C. There is no reason why the Commissioner should have been given higher powers and specially in a summary proceeding and his order should have the effect of putting an end to proprietary rights. The section appears to be applicable to the defaulter or persons claiming under him.

12. The fact that the word "defaulter" is not used in the section may be due to the fact that a defaulter has a technical meaning under Section 143, Agra and Oudh Land Revenue Act, and is a person from whom land revenue is realisable. Persons from whom other sums might be due which sums are realisable as arrears of land revenue are not defaulters as defined by Section 143 and further, those persons whose rights are liable to be affected by the provisions of Section 161, Land Revenue Act can, to my mind, apply under Section 173.

13. It is also significant that though the person from whom money is due may deposit the amount under protest and have the claim against him adjudicated in a civil Court, a third party does not appear to have been given that right under Section 183. Section 183 provides for objections by persons against whom proceedings are taken under Chap. VIII. No proceedings are taken against a third person under that Chapter who is not liable to pay the money and no process is in fact issued against him when his property is proceeded against in the mistaken belief that the property belongs to the defaulter. Section 183, therefore, does not apply to a third party.

14. It must be borne in mind that even where the property is sold by the Collector under Chap. VIII, except under Section 161 when the auction purchaser is not bound by the previous encumbrances because land revenue is the first charge on the land, the right, title and interest of the judgment-debtor alone is sold. Proviso (1) to Section 162 itself makes it clear that the rights of third parties are not affected. Even the rights of a prior mortgagee of a defaulter are protected if the land which is sold is not the land with respect to which the default has been made. The rights of persons, other than the defaulter, cannot be conveyed by the Collector to the auction purchaser and if the auction purchaser had to file a suit in a civil Court for recovery of possession, I have no doubt that,

on proof of the fact that the property did not belong to the defaulter, the suit would fail. In the circumstances I can see no reason why Section 233 (m) should be construed to mean that third parties are also bound by the proceedings taken against the defaulter under Chap. VIII, Land Revenue Act.

15. Section 233 is clearly intended to oust the jurisdiction of the civil Court with respect to certain matters dealt with in the previous chapters of the land Revenue Act and the claim of a third party that the property against which the Collector intends to proceed for realisation of arrears of land revenue against the defaulter cannot, to my mind, be deemed to be a claim "connected with or arising out of" the collection of the revenue. The third party is not interested either in the arising or in the mode of its collection. The third party is only interested in safeguarding his own property which the collector proposes to sell, nor can the words "no person" to my mind, interpreted as including a third party who is neither a defaulter nor is a person claiming under him.

16. But for a number of decisions of this Court in which contrary view has been taken I would have had no hesitation in holding that Section 233(m), Agra and Oudh Land Revenue Act does not and cannot bar the suit. In *Secy, of State v. Mahadei*, 19 ALL. 127 : (1896 A. W. N. 199), Sir John Edge C. J. and Burkitt J. held that Section 241, N. W. P. Land Revenue Act (No. XIX [19] of 1873) barred a claim by a third party whose cattle has been sold for an arrear of land revenue due by another. It may, however, be mentioned that the language of Section 241 of Act (XIX [19] of 1873) is materially different from the language of Section 233 of the present Land Revenue Act. Section 241 of Act (XIX [19] of 1873) read as follows:

"No Civil Court shall exercise jurisdiction over any of the following matters:

\* \* \* \* \*

(i) Claims connected with, or arising out of, the collection of revenue (other than claims under section one hundred and eight; nine), or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue:

In all the above cases jurisdiction shall rest with the revenue authorities only."

17. On the words "no civil Court shall exercise jurisdiction over any of the following matters" it might have been possible to hold that the jurisdiction of the civil Court was barred. In any case, the language of the section is materially different.

18. The next case is *Sahai v. Bindeshri Singh*, 1905 A. W. N. 287. In that case the learned Judges Stanley C. J. and Burkitt J. followed the previous decision. Here also the cattle belonging to one person had been sold for realisation of land revenue due from another.

19. The third case in which the same view was followed is *Abdullah v. Secy, of State*, 49 ALL. 701: (A. I. R. (14) 1927 ALL 532), in which Boys and Kendall JJ. followed the decision in the *Secy, of State v.*

Mahadei 19 ALL. 127: (1896 A. W. n. 199) quoted above, without noticing the difference in the language of the two sections and did not notice the decision in *Tulsa Kunwar v. Jageshar Prasad*, 28 ALL. 563 : (3 A. L. J. 372), though it appears the case was cited before them.

20. *Tulsa Kunwar v. Jageshar Prasad*, 28 ALL. 563 : (3 A. L. J. 372) was a decision of Sir John Stanley C. J. and of Banerji J. In it the suit was filed by a person whose property had been proceeded against for arrears of land revenue due from the defaulter. It was pointed out that Section 183 applied only to a case of a defaulter depositing the money under protest and gave no right to a third party. It was further pointed out that the Act regulates the relations of the Government and share holders in revenue-paying land in respect of Government revenue and other matters connected with revenue paying land and purports to be an Act to "consolidate and amend the law relating to land revenue and the jurisdiction of revenue officers in the North Western Provinces and Oudh" and that it was not an Act which purported to control the rights and obligations of the public generally. The learned Chief Justice put to himself this question: "Had the Legislature when it enacted this clause in contemplation any other claims, other than claims which might be advanced by parties liable to pay revenue?" and his answer was "I think not." The learned Chief Justice went on to say:

"The Act is one which regulates the relations of the Government on one side, and a limited class of persons, namely, sharers in revenue-paying mahals on the other. General words admit of restriction according to the subject to which they relate and the scope and object of the enactment. If the Legislature intended so important an innovation as is contended for, it would, I think, have manifested its intention in clear and explicit terms. The general presumption is against an intention to disturb the established state of the law, or to interfere with the vested rights of subjects, and there is a strong leaning against so construing a statute as thereby to oust or restrict the jurisdiction of the civil Courts."

If I may say so with great respect I fully agree with the above observations. Banerji J. observed:

"The language of the section is no doubt very wide, but as the learned Chief Justice has pointed out the Legislature could not have intended that except a suit under Section 183 (which in our opinion can only be brought by the defaulter) no other suit of any description could be instituted by any one in connection with the collection of revenue) or any process enforced on account of an arrest of revenue."

The learned Judge went on to say :

"It seems to me that the section forbids a suit by the defaulter against Government or possibly by any other person against the Government but it does not, I think, preclude a person in the position of the plaintiff from maintaining a suit like the present."

21. In *Secy, of State v. Radhaswami Satsang*, First Appeal No. 451 of 1938, decided by Bajpai and Dar JJ., on 13th August 1913, which is reported in an unauthorised report 1913 A. L. W. at p. 569 the

correctness of the decision in the case of Secy, of State v. Mahadei (19 ALL. 127 : 1896 A. W. n. 199), has been doubted.

22. The Full Bench case of Daya Ram v. Secy, of State, 50 ALL. 354 : (A. I. R. (14) 1927 ALL. 672 S. B), is distinguishable. There the process was is sued against the plaintiff himself on the ground that the amount was due from his predecessor-in-interest. He paid the amount under protest as required by Section 183 and brought a suit for recovery of the amount and also for damages. An objection was taken to the maintainability of the suit on the ground that the plaintiff was not the defaulter, the defaulter being his predecessor-in-interest and Section 183, therefore could not apply. The objection was overruled and the suit was decreed with respect to the amount that the plaintiff had paid under protest. His claim for damages was, however, dismissed on the ground that the Grown was not liable to pay compensation for illegal acts done by its servants but was bound to make restitution to the extent it has benefited by the illegal acts.

23. The Division Bench case of Chandu Mal v. Darbari Lal, 1929 A. L. J. 1129 : (A.I.R. (16) 1929 ALL. 592), is also distinguishable. Income, tax was claimed to be due from the plaintiff and certain immovable properties belonging to him were attached and sold. He, thereupon, filed a suit to set aside the sale and it was held that Clause (1) to Section 283 applied.

24. The case of Balwant Singh v. Secy. of State, 25 ALL. 527 : (30 I. A. 172 P.C.), is also a different case where the defaulter had paid the canal dues but not under protest as required by Section 241, N. W. P. Land Revenue Act, now Section 183, Agra Province and Oudh Land Revenue Act of 1901. He filed the suit on the ground that the amount was not really due from him. Their Lordships of the Judicial Committee pointed out that the right of suit accrued only if the amount was deposited under protest and, if there was no such protest made, subsequent discovery that the amount was not really due or had been realised in excess, would not give the plaintiff a right of suit.

25. The cases cited from Oudh are : Co-operative Society, Asa v. Qadir, A.I.R. (21) 1934 Oudh 431 : (151 I. C. 414), which is clearly distinguishable as the suit was, by the person against whom the claim was made, on the ground that the action of the liquidator in fixing: the contribution connected with the dissolution of a registered society was an illegal act.

26. Rama Nand v. Lal Behari, A.I.R. (22) 1935 Oudh 258 : ( 11 Luck. 28), is also distinguishable. In that case land revenue was realised from a co-sharer and he filed a suit for contribution against another co-sharer and it was held that Section 233 (m) barred such a suit. It is not necessary for me to express any opinion whether the suit was rightly decided. All that I need say is that the decision is not relevant to the point for consideration before us.

27. The next case is of Khud Mukhtar Bank, Utrawan v. Bhagwan Din, A.I.R. (22) 1935 Oudh 325: (11 Luck. 106), decided by Thomas J., where the defaulter was Ram Charan and the amount was admitted to have been realised against certain properties, which Bhagwan Din, father of Ram Charan, claimed to belong to him. He first filed an objection purporting to be an objection under Order 21, Rule 58, Civil P. C. His objection failed. He, thereupon, filed a suit and it was dismissed on the ground that it was barred by Section 233 (m) and reliance was placed on the case of Abdullah v.

Secy. of State, 49 ALL. 701: (A. I. R. (14) 1927 ALL. 632), without any discussion.

28. Bharat Singh v. District Co-operative Bank Ltd., A.I.R. (24) 1987 Oudh 249: (167 I.C. 554), is another single Judge decision of Nanavatty J. of the Oudh Chief Court where certain trees were sold as the property of the defaulter, but the plaintiff claimed that the trees belonged to him and the suit was dismissed on the ground that Section 233 (m) barred the suit, the reliance being placed on the decision of this Court in Abdullah's case (49 ALL. 701: A. I. R. (14) 1927 ALL. 532) quoted above.

29. The last decision of the Oudh Chief Court cited is that of Sat Narain v. Co-operative Society, Sarai Shahzadi, 15 Luck. 650: (A. I. R. (27) 1940 Oudh 375). In that case reliance was placed on the judgment of Sir John Stanley C. J. and Banerji J. in the case of Talsa Kunwar v. Jageshar Prasad, 28 ALL. 563: (3 A. L. J. 372), quoted above, and the learned Judges followed the same. The suit was against the Co-operative Society. One of the loomed Judges who decided the case remarked that "Section 233 (m), U. P. Land Revenue Act might be so construed as to bar a suit against the Secretary of State but does not bar a suit for compensation from a third person."

30. It may be further pointed out that it is the policy of the legislature to have proprietary titles, as far as possible, decided by civil Courts and revenue Courts have, therefore, been directed to refer issues of proprietary title to civil Courts and, where a revenue Court itself decides a question of proprietary title, its decision becomes appealable to the civil Courts. There appears to be no reason why the Legislature in the case of a sale under Chap, VIII should have not only taken away all right of suit of third parties, who are defaulters, relating to question of title but give the Collector and Commissioner who, in realising arrears of revenue, or other dues realisable as arrears of revenue, act more like collectors of revenue for the Government than as Courts, power to what may practically amount to confiscation of rights of third parties, and should have made the order of the Commissioner final under Section 174 in miscellaneous proceedings arising out of an objection under Section 173. It is true that we have to administer the law as we find it, but in interpreting Section 233 (m) we are entitled to look into the scheme of the whole Act, its preamble, the reason for the provision and to put such a reasonable construction as the words are capable of. Taking all this in view, I am of the opinion that Section 233 (m) cannot be so interpreted as to exclude a suit filed by a third party to prove his claim that property proceeded against belongs to him and not to the defaulter from whom Government revenue might be due.

31. I am satisfied that there was no force in the preliminary objection and the suit was wrongly dismissed by the trial Court. I would, therefore, send the case back to that Court for decision according to law. Costs here and heretofore shall abide the result.

M. Wali Ullah, J.

32. I am of the same opinion.

Raghubar Dayal, J.



33. I have had the advantage of perusing the judgment of the learned Chief Justice, and agree with the order proposed to be passed and the reasons therefor.

34. I, however, note a few other considerations in support of the view expressed to the effect that Section 233 (m), U. P. Land Revenue Act (Act No. III [3] of 1901) does not bar a suit by third party to prose his claim that the property proceeded against belonged to him and not to the defaulter from whom revenue was due or from whom sums realisable as revenue were due.

35. The main emphasis for the respondent is placed on the opening words of Section 233, which are:

"No person shall institute any suit or other proceeding in the civil Court with reaped to any of the following matters."

The words "no person" are general and will ordinarily include every person, and this provision will mean that no person, whether he is a person from the revenue or other sum was due or any other third person, could institute any suit, etc. However, reading these opening words of the section with the provisions of some of the clauses other than Clause (m) of the section would show that these two words have not. been used in such a general sense. Clause (b) of the section is:

"Claims by any person to any of the offices mentioned .....or claims by any person to nominate person to such offices."

Clause (e) is:

"The claim of any person to engage for the payment of revenue or.....,"

It would appear that the words "by any per. son" or ' of any person" in Clauses. (b) and (e) would be superfluous if the opening words "no person" included all persons, whether defaulters or third parties. It appears to me that the corresponding clauses which existed in the previous Land Revenue Acts were repeated in Section 233, Land Revenue Act of 1901, though the opening words and the closing words of the previous sections were not repeated. The earlier Acts were the North. Western Provinces Land Revenue Act 1873 (Act XIX [19] of 1873) and the Oudh Land Revenue Act (Act XVII [17] of 1876). Section 241 of the former Act and Section 219 of the latter Act correspond to Section 233 of the present Land Revenue Act;. Clause (b) of the present Act corresponds to Clause (a) of the former Act and Clause (e) of the present Act corresponds to Clause (b) of the former Act and Clause (a) of the latter. Clause (m), with which we are really concerned in this case, corresponds to Clause (i) of the former Act and Clause (f) of the latter. The opening and closing words of the corresponding sections in the earlier Acts are identical and are: "No civil Court shall exercise jurisdiction over any of the following matters;" and "in all the above cases jurisdiction shall rest with the revenue authorities only." The closing expression is not repeated in the present Act and the opening expression has been modified and is expressed in a form which does not directly oust the jurisdiction of the civil Court, but leads practically to the same result by providing that no person shall institute any suit in that Court with respect to the matters mentioned in the section. It has to be presumed that there must have been some good reason for changing the expression.

36. The expression used in the former Act which bars the jurisdiction of the civil Court in unmistakable terms with respect to the matters mentioned, would completely bar any suit of the nature referred to therein, irrespective of the fact as to who had instituted the suit. Such need not be the result of the opening words of the present Section 233, and this can only be if the section is interpreted in the manner proposed. If the words be interpreted in the manner in which the respondent would like us to interpret them and to the effect that suits of the nature mentioned in Section 233 cannot be instituted in the civil Court, irrespective of the fact as to who was instituting them, there would be no change in law and the change of words in the new enactment would be for no good reason. It would also mean that an expression not equally clear and unmistakable in terms was substituted by the Legislature for an expression which left no room for doubt. I am, therefore, of the view that the change was with a reason, and the reason was that the jurisdiction of the civil Court was taken away with respect to the matters mentioned in the section, not when the suit was brought by any person, but was brought by the persons contemplated by the Legislature to be the persons who would be affected and might feel aggrieved by certain proceedings taken under the provisions of this Act. It has already been shown that if proceedings be validly taken under this Act for the collection of revenue or sums realisable as revenue, they would always toe against the person who owed revenue or the other sums and against the property of such person. Thus no third person is likely to be affected adversely by the proceedings under this Act and can certainly have no occasion to be aggrieved by such proceedings and to institute a suit.

37. I am also of opinion that the words of Clause (m) of Section 233 themselves do not refer to the claims by any person, be he the defaulter in view of the certificate issued under Section 145, Land Revenue Act, or any other person who owed sums realisable as arrears of revenue, or a third person, in spite of the general nature of the expressions in the clause. I would refer to the case of Balwant Singh v. Secy, of State, 25 ALL. 627: 480 I. A. 172 P. C.). In this case a landed proprietor sued for the refund of the amounts paid by him in excess of what was properly payable at the time of payment on account of canal dues from him. It was alleged that the over payment was made by mistake. The suit was dismissed by the High Court on the ground that it was barred in view of Section 241 (1), Land Revenue Act, No. XIX [19] of 1873 and Section 45 of Act No. VIII [8] of 1873. Their Lordships of the Judicial Committee observed at page 532:

"There is no doubt that the canal dues are realisable as revenue under Section 45, Northern Indian Canal and Drainage Act (Act VIII [8] of 1873), and therefore, the only question is whether this claim made by the plaintiff was a claim 'connected with or arising out of the collection of revenue, or on account of any sum. . . .realisable as revenue.' The exception 'other than claims under Section 189' appears to their Lordships to throw some light upon the meaning of (he section, because Section 189 enables a party from whom revenue is demanded to pay under protest and upon such payment being made, than, subject to the pecuniary limitations prescribed by law, the person against whom such proceedings were taken may sue the Government for the amount so paid in any civil Court situate in the district where such proceedings were taken, and in such suit the plaintiff may, notwithstanding Section 149, give evidence of the amount which he alleges to be due from him." That is an exception from what the Act describes as 'claims connected with or arising out of the collection

of revenue'. ..... But though that section does not apply, it illustrates what is intended to be included in claims 'connected with or arising out of the collection of revenue or an account of any sum realisable as revenue.'

According to these observations the key to the interpretation of the expression "claims connected with or arising out of the collection of revenue or an account of any sum realisable as revenue" is to be found in the exception made. The exception applies to that person alone against whom the writ of demand for the arrears of revenue of sums realisable as such is issued. It follows, therefore, that the expression "claims connected with or arising out of the collection of revenue or an account of any sum realisable as revenue" does not really include all claims which may have some sort of connection with the realisation of revenue, but includes those claims only which are connected with or arise out of the collection of revenue or an account of any sum realisable as revenue from the person who owes that sum either as a defaulter or as a person owing that sum, and does not refer to claims which may have a connection with the collection of revenue but are made by third parties.

38. It should, therefore, follow that claims connected with or arising out of any process enforced on account of an arrear of revenue or any sum realisable as revenue include only claims by defaulters or persons from whom the sums were due and do not include claims by third parties against whose property the process happened to be enforced due to the Revenue Officer's mistaken belief that it belonged to the defaulter.

39. I am, therefore, of opinion that the present suit was cognizable by the civil Court.

Agarwala, J.

40. The appellant Radha Kishun instituted a suit in the Court of the Munsif Fatehabad, Agra, for a declaration that house No. 210 situated in village Ram Nagar Khandauli, District Agra, was the property of the plaintiff and was not liable to be sold by the Ram Nagar Co-operative Society defendant 1 on account of the recovery of dues from Phool Chand defendant 2. The suit was later on transferred to the Court of the Civil Judge, Agra, and was tried by him.

41. It appears that Phulchand was a member of the Co-operative Society of Ram Nagar and was indebted to it. The Ram Nagar Co-operative Society went into liquidation and the Registrar, Co-operative Societies, asked the collector of Agra to recover a sum of Rs. 639-13 0 from Phul Chand under Section 42 (4A) Co-operative Societies Act, 1912 (Act II [2] of 1912) as amended by the Co-operative Societies (Amendment) Act, 1919 (U. P. Act CXI [111] of 1919), as arrears of land revenue. In the letter of requisition it was mentioned that a cart, two bullocks and cultivation (the standing crops) belonging to Phulchand may be attached and sold. The Collector received this requisition on 30th March 1937. Somehow or other the collector took proceedings against the house in dispute. The plaintiff filed an objection with the Officer-in-charge of the Co-operative Societies at Agra but his objection was dismissed on 10th September 1941. The plaintiff, therefore, instituted the present suit on 13th September 1941, for the reliefs stated above impleading, (1) The Ram Nagar Co-operative Society through three officials, (2) Phul Chand. Phulchand defendant did not contest the suit. The Ram Nagar Co-operative Society through its three officials defended the suit. It denied

the plaintiff's title to the house and contended that the suit was not maintainable in the civil Court in view of the provisions of Section 233 (m), U. P Land Revenue Act, 1901. The Civil Judge did not decide the question of title to the house. He decided some other issues with which we are not concerned, and decided the issue with regard to jurisdiction of the Court in favour of the defendants. In consequence of this finding, he dismissed the suit with costs. The plaintiff appealed to the District Judge of Agra and Mahtab Rai, one of the officers through whom the Ram Nagar Co-operative Society was sued also filed a cross-objection in respect of the costs which were not awarded to him personally. The District Judge also held that the Civil Judge had no jurisdiction to try the suit and allowed the cross-objection of Mahtab Rai with regard to costs. Against this decree the plaintiff filed a second appeal in this Court. The only ground urged in the grounds of appeal was that the lower Court erred in holding that the suit was barred by Section 233 (m), U. P. Land Revenue Act. The appeal came up for hearing before a learned single Judge of this Court, who referred it to a Division Bench. The Division Bench was of opinion that in view of the conflict of opinion as to the correct interpretation of the language of the section the appeal should be heard by a Full Bench. The case ultimately came up before a Full Bench of five Judges, who required certain findings from the lower Court as regards the terms of the requisition sent by the Registrar, Co-operative Societies, to the Collector under Section 42 (4A), Co-operative Societies Act, 1912, and about the steps taken, or processes enforced, by the Collector upon the receipt of the said requisition. The lower Court has sent its findings and now the appeal is before us for disposal.

42. The sole question for determination is whether the suit was barred by the provisions of Section 233 (m), U. P. Land Revenue Act, 1901. Section 293 runs as follows :

"Jurisdiction of Civil Courts --Section 233. No person shall institute any suit or other proceedings in the civil Court with respect to any of the following: matters : --

\* \* \* \* \*

(b) claims to set aside a sale for arrear of revenue except on the ground of fraud, under Section 175 (m) claims, connected with, or arising out of the collection of revenue: (other than claims under S. 183), or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realisable as revenue."

43. Section 42 (4A), Co-operative Societies Act, 1912 (Act II [2] of 1912) under which the Registrar sent the requisition for realisation of dues from Phool Chand provides that:

"Any sum ordered under this section to be recovered as a contribution to the assets of the society or costs of liquidation may be recovered on a requisition being-made in this behalf to the Collector by the Registrar, Co-operative Societies, in the same manner, as arrears of land revenue."

Rule 137 framed under the Co-operative Societies Act, 1912 (Act II [2] of 1912) provides that:

"Awards of arbitrators and decision of an Assistant Registrar or the Registrar may be enforced in either of the following ways:

(i) On a requisition to the Collector of the district made by the Registrar, all sums recoverable under the award or decision shall be recovered as if they were/ arrears of the land revenue.

(ii) On application to the civil Court having jurisdiction over the subject-matter of the award or decision,, that Court shall enforce the award or decision as if it were a decree of the Court."

44. Mr. Gopal Behari appearing on behalf of the plaintiff-appellant drew our attention to the difference in the words used in Section 42 (4A) "in the same manner as arrears of land revenue" and in Section 233 (m), U. P. Land Revenue Act 1901, "realisable as revenue" and urged that Clause (m) of Section 233 would apply only if a sum was realisable as land revenue and not merely "in the same manner as" land revenue. I do not think that there is any force in this distinction. Rule 137 uses the words "as if they were-arrears of land revenue " The expression "as if," "as" and "in the same manner as" appear to me to convey the same idea.

45. The next contention of Mr. Gopal Behari is that the prohibition contained in Clauses (1) and (m) of Section 233, U. P. Land Revenue Act, does not relate to suits with regard to sales or proceedings held without any jurisdiction such as rules of property of persons who are not defaulters or who have not been treated as snob. I think that this contention has force,

46. Clauses (1) and (m) of Section 233 refer to a Sale for arrears of revenue or processes for the Collection of revenue and must be read along with the provisions of the Land Revenue Act, 1901, authorising the sale or the levy of the process or the enforcement of the process on account of arrears of revenue or any other sum realisable as such. These provisions are to be found in Chap, VIII of the Act, Sections 141 to 188. Section 145, states that:

"A statement of account certified by the Tahsildar shall, for the purpose of the Chapter, be conducive evidence of the existence of the arrear, of its amount, and of the person who is the defaulter."

Section 146 declares the process for the recovery of revenue in the following words :

"An arrear of revenue may be recovered by one or more of the following processes :.....h) by sale of other immovable property of the defaulter."

Mark the word "defaulter". Section 182 describes in what manner an arrear of revenue may be recovered from the defaulter by sale of his immovable property. Then, there is a proviso which is important:

"Provided that no interests save those of the defaulter alone shall be affected by such process,"

Sub-section (2) of Section 162 then provides that :

"Sums of money recoverable as arrears of revenue, but not due in respect of any specific land, may be recovered by process under this section against any immovable property of the defaulter."

47. It is thus abundantly clear that the Act authorises the sale of immovable property belonging to the defaulter. And the Act expressly forbids the sale of the interests of any person other than a defaulter and declares that even if such interests are sold they shall remain unaffected by the process."

48. Section 172 provides for applications for setting aside a sale on deposit of arrears and for payment to the purchaser a sum equal to five per cent, of the purchase money and the costs of the sale. The section is intended to give a special opportunity to a defaulter to save his property from sale by payment of the amount due from him and certain other sums. The section no doubt may be availed of by "any person whose land or other immovable property has been sold under the Act." A stranger may, therefore, if he chooses to treat the sale as valid, avail of the section by paying the sums mentioned in the section. But he is not bound to do so. The section obviously refers to a sale held by the Collector acting within his jurisdiction. It does not refer to a sale which is entirely without jurisdiction.

49. Section 173 provides for an application to set aside the sale on account of some material irregularity or mistake in publishing or conducting it, and further provides that no sale shall be set aside on such ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of such irregularity or mistake. This section does not obviously apply to sales which are held wholly without jurisdiction.

50. Section 174 refers to confirmation of sale on the expiry of thirty days from the date of sale, if no application either under Section 172 or under Section 173 has been made, or if such application was made and has been rejected.

51. Section 175 provides for a bar of claims founded on irregularity or mistake with the exception of suits in the civil Courts for the purposes of getting aside the sale on the ground of fraud.

52. Section 183 provides for the payment under protest of the amounts sought to be recovered from a person against whom the process has been issued. The section runs as follows:

"Whenever proceedings are taken under this Chapter against any person for the recovery of any arrear of revenue, he may pay the amount claimed under protest to the officer taking such proceedings, and upon such payment the proceedings shall be stayed, and the person against whom such proceedings were taken may sue the

Government in the civil Court for the amount so paid."

The section clearly refers to the payment of money under protest by a person against whom process for the recovery of any arrear of revenue has been issued. It may be that the person declared to be a defaulter by the Tahsildar has been wrongly so declared or the whole of the amount declared against him was not due from him. The section gives to such a defaulter an opportunity to make payments under protest, and then reserves a right for him to sue the Government in a civil Court for the recovery of the amount so paid. The section does not enable a stranger to the proceedings to make the payment under protest.

53. There is no provision in the Act to enable a stranger to have a sale of his property averted or to have a sale held entirely without jurisdiction set aside.

54. When the Legislature in Section 162 expressly provided that the interest of a person, who is not a defaulter, shall not be affected by any sale held by the Collector and when no remedy was provided for a stranger to have the sale averted or to have the sale set aside on the ground that the property belonged to him and not to the defaulter against whom proceedings were taken, it does not stand to reason that the stranger should have no right of suit to enforce his rights.

55. It is a general rule of law that where there exists ft right there exists also a remedy for an infringement of such right: *Ubi jus ibi remedium*. *Ashby v. White*, (1703) 2 Lord Raymond's Rep. 938 per Holt C. J. at p. 953.

56. We have noticed that under Section 175 even a defaulter has been given a right to sue in the civil Court to have the sale set aside on the ground of fraud, and Section 183, as we have already seen, entitles a defaulter to make a payment under protest and to recover it again by filing a suit against the Government in the civil Court by proving that he was not a defaulter. Is it possible to imagine that the Legislature would deprive a third party who was not a defaulter at all, of his right to sue in the civil Court to have the sale set aside or for a declaration of his rights ?

57. To my mind Clause (b) of Section 233 has reference to claims to set aside a sale held by the Collector acting within his jurisdiction under the Act and Clause (m) has reference to claims connected with or arising out of the collection of revenue or any process enforced on account of arrears of revenue, which process or proceeding for collection of revenue has been taken within the jurisdiction conferred by the Act. These clauses have no reference to claims arising out of sales or other process taken absolutely without jurisdiction.

58. In this view of mine, I am supported by a decision of the Judicial Committee repotted in *Balkishen Das v. Simpson*, 25 Cal. 833 : (25 I. A. 151 P. C.). In that case a sale of the estate of a person, who was not in fact in arrears but was by mistake of the office of the Collector erroneously shown to be in arrears, was held under Act XI [11] of 1859. The Act provided for the sale of estates in arrear of payment of revenue.

59. Section 2 of Bengal Act, VII [7] of 1868 provided for an appeal to the Commissioner against any sale held under Act XI [11] of 1859 and made the order of the Commissioner final.

60. Section 33 of the Act barred the jurisdiction of the civil Court in certain respects. It ran as follows:

"No sale for arrears of revenue or other demands realisable in the same manner as arrears of revenue are realizable made after the passing of this Act, shall be annulled by a Court of Justice, 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; and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under Section 25 of this Act and no suit to annul a sale made Under this Act shall be received by any Court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in Section 27 of this Act: and no person shall be entitled to contest the legality of a sale, after having received any portion of the purchase money. Provided, however, that nothing in this Act contained shall be construed to debar any person, considering himself wronged by any act or omission connected with a sale under this Act, from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged."

61. Section 33, therefore, on its face circumscribed the right to sue in the civil Court, (a) to a personal claim for damages and (b) to the Betting aside of sales "on the ground of its having been made contrary to the provisions of this Act; and then only on proof that the plaintiff had sustained substantial injury by reason of the irregularity complained of."

It was held that there was not irregularity in, the conduct of the sale in that case. But the Privy Council set aside the sale on the ground that S. 33 did not apply to sales held without jurisdiction. Their Lordships said at p. 842:

"The Act does not sanction, and by plain implication forbids, the sale of any estate which is not, at the time, in arrear of Government revenue. The whole clauses of the Act of 1359, in so far as these relate to sales, or to their challenge at the instance of the proprietor, as well as the provisions of Section 2 of Bengal Act VII [7] of 1868, are framed upon the express footing that they are to be applicable to the sale of estates which are in arrear of duty. The enactments of 1859 and of 1868 are obviously intended to apply to cases in which, if the irregularity or illegality of the sale proceedings alleged by the objector be negatived, the sale will remain valid. But the chief and substantial objection upon which the appellants' plaint is based is, that at the time when their 5 annas share of the village Shahzadpur Anderkilla was sold, there were no arrears of revenue due by them in respect of it. It does not, appear to their Lordships to admit of dispute that the objection is founded in fact. In their opinion a stupid blunder made by the Collector or his staff in his own book cannot



deprive the appellants of their right to claim, and have effect given to the permanent abatement which was allowed by the Board of Revenue in March 1884. The result is that the whole proceedings of the Collector, with a view to the sale of the 5 annas share, were beyond his jurisdiction, and are not entitled to the protection given him by the Act in cases where sale is authorised although it may be attended with some irregularity or illegality."

62. I think the present case is even stronger than the case before the Privy Council. Here the plaintiff was not a defaulter even by mistake.

63. It may be mentioned that under the old Land Revenue Act (Act XIX [19] of 1878) the opening words of Section 241 corresponding to Section 233 of the present Land Revenue Act were different. Then the words were:

"No civil Court shall exercise jurisdiction over any of the following matters."

These words were wider than the words now used, and this may also indicate an anxiety on the part of the Legislature to make it clear that the jurisdiction of the civil Court is not absolutely barred.

64. Opinion in this Court and in the Oudh Chief Court has been divided.

65. The earliest case is reported in Secy, of State v. Mahadei, 19 ALL. 127 : (1896 A. W. N. 199). This was under the old Act where, as we have already seen, the opening words of Section 241 were wider than those in the corresponding Section 233 of present Act. It was held by Sir John Edge and Burkitt J. that even a stranger whose cattle have been sold in satisfaction of an arrear of land revenue due by another person had no remedy in the civil Court.

66. Their Lordship's attention was not invited to the question of the sale having been entirely without jurisdiction.

67. This case was followed by another Bench of this Court in Sahai v. Bindeshri Singh, 1905 A.W.N. 237. No fresh reasons were given in this case.

68. In Tulsa Kunwar v. Jageshar Prasad 28 ALL. 563 : (3 A. L. J. 372), however, the same view as I have expressed above was taken. Sir John Stanley C. J., observed at page 536 that:

"There is no doubt that the claim of the plaintiff is In a sense connected with the collection of revenue, but had the Legislature when it enacted this clause in contemplation any other claims than claims which might be advanced by parties liable to pay revenue? I think not. The Act is one which regulates the relations of the Government on one side, and a limited class of persons, namely, sharers in revenue-paying mahals on the other. General words admit of restriction according to the subject to which they relate and the scope and object of the enactment. If the Legislature intended so important an innovation as is contended for, it would. I

think, have manifested its intention in clear and explicit terms. The general presumption is against an intention to disturb the established State of the law, or to interfere with the vested rights of subjects, and there is a strong leaning against so construing a statute as thereby to oust or restrict the jurisdiction of the civil Courts. In the provision that 'no person shall institute a suit' it seems to me that the Legislature had in contemplation the class of persons to whom the Act is its general bearing is applicable that is to share-holders liable to pay Government revenue and not to strangers outside this body."

69. Another Division Bench consisting of Boys and Kendall JJ., however, in *Abdullah v. Secretary of State*, 25 A. L. J. 521 : (A. I. R. (14) 1927 ALL. 632), preferred to follow the two earlier cases of *Secretary of State v. Mahadei*, 19 ALL. 127 : (1896 A. W. N. 199) and *Sahai v. Bindeshri Singh*, 1905 A. W. N. 237.

70. A Full Bench of three Judges of this Court consisting of Lindsay, Iqbal Ahmad and Sen JJ., in *Daya Ram v. The Secretary of State*, 50 ALL. 364: (A. I. R. (14) 1927 ALL 672 S. B.), had to consider the matter again :

"One RN having died owing a certain sum to Government as taqavi, the revenue authorities attached a she-buffalo in the possession of DR on the ground that the latter was the heir of RN and that the buffalo was the property of the deceased DR objected to the attachment, but his objection was overruled. He thereupon paid under protest the amount of taqavi claimed, and got back the buffalo, but meanwhile its calf had died owing to its separation from the mother. He then sued the Secretary of State for India in Council for refund of the money paid, for damages for the death of the calf, and for the price of the milk of which he had been deprived owing to the alleged wrongful attachment."

The Full Bench held that Section 183, United Provinces Land Revenue Act applied, and the applicant was competent to maintain a suit against the Secretary of State, but only for the recovery of the amount paid and not for damages. I respectfully consider that the decision was perfectly correct on the facts of that case. DR against whom process was levied was an heir of a defaulter and was himself considered to be a defaulter. He had, therefore, a right to make the deposit under Section 183 under protest and to recover the same amount from the Government. The Bale of the she-buffalo could not be said to be without jurisdiction as the Act gave jurisdiction to the Collector to sell the property of a person declared by the revenue authorities to be a defaulter. The general observations made in that case must be read with the facts of the case and not divorced from them.

71. The case reported in *Chandu Mal v. Darbari Lal*, 1929 A. L. J. 1129 : (A. I. R. (16) 1929 ALL. 592), was a suit by a defaulter and not by a stranger and so the decision is clearly distinguishable.

72. The question again came up for discussion before a Division Bench of this Court in First Appeal no. 421 of 1938 decided by Bajpai and Dar JJ., on 13th August 1943. Their Lordships observed that :

' We can find no jurisdiction in the.....U. P. Land Revenue Act to bind third parties,"

and they referred to the proviso to Section 162 (1) of the Act as supporting "the view that strangers are not affected by the process of the Collector and the wide language of Section 233 (m) should, therefore, be restricted to defaulters."

I am respectfully in agreement with the view of the Bench.

73. In the chief Court of Oudh undoubtedly in four cases the earlier view of this Court, taken in Secy. of State v. Mahadei, 19 ALL. 127: (1896 A. W. N. 199), was followed, vide Cooperative Society, Asa v. Qadir, A. I. R. (21) 1934 Oudh 431: (151 I. C. 414) ; Rama Nand v. Lal Behari, A. I. R. (22) 1935 Oudh 253 : (11 Luck. 28) ; Khud Mukhtar Bank, Utrawan v. Bhagwan Din, A. I. R. (22) 1935 Oudh 326 : (11 Luck. 106) and Bharat Singh v. District Co. operative Bank Ltd., A.I.R. (24) 1937 Oudh 249: (167 I. C. 554). In my opinion these cases were, not correctly decided.

74. It is urged that we should not limit the scope of the words which are of wide import and that 'no person" includes not only defaulters but strangers as well and that claims to set aside the sale in Clause (m) must refer to a sale which is valid or invalid and a claim connected with or arising out of a process for recovery of arrears of revenue must refer to any process against anybody.

75. It is not a rule of absolute application that in all cases the general words ought to be interpreted in their widest import. As stated by Maxwell on the Interpretation of Statutes (9th Edn., p. 63):

"It is in the interpretation of general words and phrases that the principle of strictly adapting the meaning to the particular subject-matter with reference to which the words are used finds its most frequent application. However wide in the abstract, they are more or less elastic, and admit of restriction or expansion to suit the subject-matter. While expressing trully enough all that the Legislature intended, they frequently express more, in their literal meaning and natural force; and it is necessary to give them the meaning which best suits the scope and object of statute without extending to ground foreign to the intention. It is, therefore, a canon of interpretation that all words, if they be general and not express and precise, are to be restricted to the fitness of the matter. They are to be construed as particular if the intention be particular; that is, they must be understood as used with reference to the subject-matter in the mind of the Legislature, and limited to it."

The learned author again observed at p. 207 :

"Whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, the Courts act upon the view that such a result could not have been intended, unless the intention had been manifested in the express words."

76-78. I think that the intention of the Legislature as manifested by a consideration of the provisions contained in Chap. VIII was to deal with claims by defaulters in connection with sales or processes for the realisation of arrears of revenue from them or in other words in connection with sales and process which were authorised by the Act and were within the jurisdiction of the Collector. Strangers to the proceedings could have not been intended to be prevented from asserting their rights which were expressly reserved to them under the proviso to Section 162 (1).

79. I would, therefore, hold that the suit in the present case was maintainable in the civil Court, and would, therefore, allow the appeal, set aside the decrees of both the Courts below and remand the case for trial according to law. Costs here and hitherto shall abide the result.

P.L. Bhargava, J.

80. The facts, which have given rise to this appeal and the circumstances in which it has come up before us, are set out in detail in the judgments of Hon'ble the Chief Justice and my learned brother Agarwala J. I will briefly recapitulate them in order to express my view point on the question of law involved in the appeal. A certain sum of money was due to the Ram Nagar Co-operative Society (in liquidation) from Phool Chand, a member of the Society, who lived in village Ram Nagar Khandauli, in the District of Agra. Section 42 (4A), Co-operative Societies Act (U. P. Act II [2] of 1912), as amended by the Co-operative Societies (Amendment) Act (U. P. Act III [3] of 1919), empowered the Registrar of the Co-operative Societies to send a requisition to the Collector for recovery of the said amount as arrears of land revenue. The Registrar sent a requisition to the Collector of Agra, specifying the property from which the money could be recovered; and the property so specified was a bullock-cart, two bullocks and cultivation in village Ram Nagar Khandauli. It appears that the amount due could not be recovered from the property mentioned in the requisition and a process had to be issued under Section 162 (2), Land Revenue Act (U. P. Act III [3] of 1901), against immovable property of the "defaulter," namely, Phool Chand. That process was enforced against a house in village Ram Nagar Khandauli, which Radha Kishun, the appellant before us, claimed as his property. Thereupon, Radha Kishun instituted the suit, out of which this appeal has arisen in the civil Court to obtain a declaration that he was the owner of the house and it was not liable to sale for recovery of any money due from Phool Chand. The respondents, the Ram Nagar Co-operative Society, though Anand Behari Lal Inspector, Mehtab Rai and Raj Narain Supervisor, and Phool Chand were arrayed as defendants in the suit. They denied the appellant's claim and contended that, in view of the provisions of Section 233 (m), Land Revenue Act, the suit was not cognizable by the civil Court. The civil and Sessions Judge of Agra, who tried the suit, upheld the last contention and without going into the merits of the case dismissed the suit. His decision was, on appeal, confirmed by the District Judge of Agra.

81. The sole question for decision in this appeal is whether the suit was barred from the cognisance of the civil Court on the ground set out above. As the issue relating to the appellant's title to the house was not decided by either of the Courts below, we have to assume, for the sake of argument that the appellant was the owner of the house against which the process under Section 162 (2), Land Revenue Act was enforced. No process for the recovery of the amount due from Phool Chand could be issued against the appellant or his property. Consequently, when a process was issued against the

house a cloud was cast upon the appellant's title thereto and he became entitled to institute a suit in the civil Court to obtain relief, under Section 42, Specific Relief Act. Obviously, the suit instituted by the appellant was a suit of that nature and we have to see whether clause (m) of Section 233, Land Revenue Act, bars such a suit. Clause (m) of Section 233 reads thus:

"(m) Claims connected with, or arising out of, the collection of revenue (other than claims under Section 183), or any process enforced on account of an arrear of revenue, or on account of any sum which is by this or any other Act realisable as revenue."

82. The provisions relating to collection of revenue and other sums realizable as revenue, and the various processes which can be issued for that purpose, are contained in chap. VIII, Land Revenue Act. The scheme of this Chapter is as follows: The person responsible for payment of arrear of revenue is described as "defaulter" (Section 143) and the different process can be issued either against his person or property; the land in respect of which the arrear is due or other immovable property (Section 146). The detailed procedure relating to each process has been prescribed (Sections 147 to 165). If the land in respect of which the arrear is due or other immovable property of the defaulter is put up for sale, he can, before the sale has taken place, pay the arrears and avoid the sale (Section 166); and after the sale, which the collector has to report to the Commissioner (Section 171), he is allowed to put in an application to set aside the sale on deposit of arrear etc. (Section 172) or to set aside the sale on the ground of some material irregularity or mistakes in publishing or conducting it (Section 173). If no such application is made or it has been made and rejected, the Commissioner has to confirm the sale and his order becomes final (Section 174). He is also given the right to have the sale set aside on the ground of fraud by means of a suit in the civil Court (Section 175). There is a special provision for cases where "proceedings are taken under this Chapter against any person for the recovery of any arrear of revenue" and such a person has to pay the amount for realisation of which the process has been issued under protest and file a suit in the civil Court against the Provincial Government for recovery of the amount so paid (Section 183).

83. It would thus appear that in chap. VIII only the processes relating to collection of revenue or sums realizable as such and the claims connected with or arising from such processes enforced against defaulters or persons treated as such have been dealt with. There is no provision in the Chapter for the issue or enforcement of any process against a person other than the defaulter, nor is there any provision enabling such a person to raise any objection if such process is enforced against his person or property. On the other hand, in Section 162 there is a proviso, which lays down "that no interests save those of the defaulter shall be affected by snob process,"

84. Learned counsel for the respondents has contended that there is a provision for the issue of a sale proclamation and the object of issuing the same is to invite objections from all concerned and that the words "any person", which appear in Section 172 (1), Land Revenue Act, are wide enough to include even persons other than the defaulters. He has further contended that the provisions of Sections 173 and 175 of the Act can also be availed of by persons who are not defaulters. The absence of any provision enabling any person other than defaulters to raise an objection to the attachment or sale of his property, however, rules out these contentions. If the legislature had such persons in

view, we would have found some provision similar to those contained Order 21, Rules 58 to 63, Civil P. C. No such provision was necessary for the defaulters, who, being responsible for payment of arrears, could not object to attachment or sale. They could pay the arrears and avoid the sale or object to the sale on the ground of fraud or some material irregularity or mistakes in publishing or conducting it. We find provisions for this purpose in Sections 166, 172, 173 and 175 of the Act.

85. Section 172, Land Revenue Act, gives a right to "any person whose land or other immovable property has been sold under this Act" at any time within 30 days from the date of sale to apply to have the sale set aside on his depositing the amount of arrear, the costs of the sale and a sum equal to five per cent, of the purchase-money. If a person other than the defaulter were to deposit the amounts mentioned above, according to the contention put forward on behalf of the respondents, his suit for the recovery of the amounts would be barred under Section 233 (m) of the Act. The legislature could never have intended to create such a situation. Obviously, therefore, the section only gives a right to the defaulter to pay the arrear and retain the property. That is the last chance given to him to save the property. .

86. The provisions of Section 173 of the Act cannot be availed of by a person other than the defaulter. If it was intended to give him the right to object to a sale on the ground of some material irregularity or mistakes in publishing or conducting it, he must have been given some right to file an objection at an earlier stage before the sale as well and he would not have been required to wait until after the sale, had taken place. That the legislature had no such intention would appear from the provisions of the following section, namely Section 174 of the Act. That section lays down that the order of the Commissioner rejecting the application under Section 173 and confirming the sale shall be final. If the order of the Commissioner becomes final, the right, title and interest of a person other than the defaulter, who was not liable to pay the amount of arrears and against whom no process for the recovery of the amount could be issued or enforced would be lost and a person whose property had been illegally attached and sold would be left without a remedy. The order from which such consequences follow is passed in a proceeding in which the Commissioner has merely to see whether there was some material irregularity or mistakes in publishing or conducting the sale and in which no question of title can be raised or decided. The legislature could not have intended that such an order should extinguish the right, title and interest of persons, who were not at all responsible for the payment of the amount of arrears. It follows, therefore, that Section 173 was not intended to confer a right on persons other than defaulters to file an application for setting aside the sale on the ground of irregularity, etc.

87. Section 175, Land Revenue Act, makes an exception in respect of a civil suit for the purpose of setting aside a sale on the ground of fraud. If the legislature had in view a person other than defaulter, he would be entitled to institute such a suit. Section 233 (m), however, makes no exception in respect of a suit of that nature, as it has made in respect of a suit under 8. 183 of the Act. Thus, the interpretation of Section 175 so as to include a suit by a person other than a defaulter within its purview would give rise to an inconsistency, while if we interpret Sections 173 and 175 as referring to defaulters only no such inconsistency would arise. An interpretation, which makes the different provisions of an enactment consistent, must prevail.

88. The result of the above discussion is that the provisions of Chap. VIII relating to collection of revenue and of sums recoverable as revenue and these relating to the processes issued for that purpose have been enacted with particular reference to defaulters only.

89. As we have already seen Clause (m) of Section 233 contemplates "claims connected with, or arising out of the collection of revenue (other than claims under Section 183), or any other process enforced on account 'of an arrear of revenue, or on account of any sum which is by this or any other Act realizable as revenue."

In order to interpret this clause, we have to read it along with the provisions relating to collection of revenue etc., and the processes connected therewith in Chap. VIII. The processes referred to in Clause (m) are those which are mentioned in Section 146 of the Act. The various processes mentioned in Section 146 can be issued and enforced only against the person or property of a defaulter. Consequently, the claims referred to in the said clause are those which are connected with such processes. It also refers to a claim under Section 183 of the Act by a person against whom proceedings are taken under the said chapter and who wants to dispute his liability.

90. The clause makes no reference to process issued against a defaulter and enforced against the person or property of a person who is not a defaulter and against whom proceedings have not been taken under Chap. VIII. In such a case, as far as the enforcement of the process against a person other than the person against whom it was issued, would be an act beyond the jurisdiction of the collector and as such void; Apparently, therefore, Clause (m) of Section 233 of the Act does not contemplate claims connected with or arising from such enforcement.

91. Learned counsel for the respondents has laid great stress upon the opening words of" Section 233, Land Revenue Act, namely :

"No person shall institute any suit or other proceeding in the civil court with respect to any of the following matters."

His contention is that the words "no person" are wide enough to include all persons against whom a process had been enforced, even though it was not intended to be enforced against them. The opening words of Section 233 have to be read and construed along with the wordings of Clause (m) and, if we read them together, it becomes quite clear that the persons referred to in the opening words of the section are those who have claims connected with or arising out of the collection of revenue (other than claims under Section 183) or any process enforced on account of any arrear of revenue, etc. In other words, they must be persons against whom the processes are issued and enforced and not the persons against whom the processes are neither issued nor enforced, or the persons against whom the processes are enforced illegally and without jurisdiction.

92. The position of the defaulters or persons treated as such is different from that of the persons who do not belong to the said category. The former class of persons are liable to pay the amount in arrears and the special law, namely the Land Revenue Act, makes a provision for the recovery of the amount due from them and it also gives them certain rights and provides for remedies available to

them in connection with the processes issued against them. The latter class of persons are neither liable to pay the arrears, nor can any process be issued or enforced' against them. The special law makes no mention of their rights and provides no remedy for the infringement of their rights, which means that the remedy available to them under the general law like the one contained in Section 42. Specific Belief Act, remains unaffected. The provisions of Section 233 (m), Land Revenue Act, cannot, therefore, affect the claims of persons other than defaulters.

93. Coming to the case law, which has been cited before us, I do not think I can usefully add anything to the comments made thereon by the learned Chief Justice in his judgment. In view of the changes that have since been brought about in the relevant provisions of the Land Revenue Act, the cases based upon the interpretation of the old Act of 1873 cannot help us in interpreting Section 233 (m), Land Revenue Act, as it now stands. The opening words of the corresponding section in the old Act were :

"No civil Court shall exercise jurisdiction over any of the following matters."

And the following words appeared at the end of the section :

"In all the above cases jurisdiction shall rest with the revenue authorities only."

The opening words of the present section have been quoted above; and it would appear that there has been a material change in the old section. We also find that the closing words of the section have been omitted. Therefore, the present section cannot be interpreted to bar the jurisdiction of the civil Court in all cases connected with or arising out of the collection of revenue etc. In this view of the matter, the rulings reported in *Secy, of State v. Mahadei*, 19 ALL. 127 : (1896 A. W. N. 199) and *Sahai v. Bindeshri Singh*, 1905 A.W.N. 237 and those based upon those rulings must be left out of consideration. These cases were cited before us against the view which has been pressed above and which finds support in *Tulsa Kunwar v. Jageshar Prasad*, 28 ALL. 663: (3 A.L.J. 372).

94. I, therefore, concur in the order proposed to be passed in the appeal by Hon'ble the Chief Justice.

95. By the Court. -- We are satisfied that there was no force in the preliminary objection and the suit was wrongly dismissed by the trial Court. The appeal is allowed, the order of the lower Court is set aside and the case is sent back to that Court for decision according to law. Costs here and heretofore shall abide the result.