

Privy Council Appeal No. 35 of 1928.
Patna Appeal No. 11 of 1925.

Musammat Saraswati Bahuria - - - - - *Appellant*

v.

Surajnarayan Chaudhuri and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH JANUARY, 1931.

Present at the Hearing :

LORD ATKIN.

LORD RUSSELL OF KILLOWEN.

SIR LANCELOT SANDERSON.

[*Delivered by* SIR LANCELOT SANDERSON.]

This is an appeal by the plaintiff in the suit from a judgment and decree of the High Court of Judicature at Patna, dated the 19th February, 1925, which reversed a decree of the Subordinate Judge of Darbhanga dated the 25th June, 1921.

The delay in the disposal of this appeal is accounted for by the fact that the appeal was dismissed for want of prosecution on the 4th November, 1926, and it was not until the 22nd March, 1928, that by an order of His Majesty in Council the appeal was restored upon certain conditions therein specified. The appellant's case was lodged in April, 1928; the respondents, however, did not file a case and were not represented at the hearing of this appeal.

The suit was brought by the plaintiff, a *purdanashin* lady, to set aside the sale of a certain share of Mauza Ladugaon, which took place on the 6th June, 1919, by reason of alleged arrears of revenue, for recovery of possession of the said share and for mesne profits.

It was alleged that the plaintiff's share in the said village was 5 annas 10 gandas, and that the second and third defendants, Bedanand Thakur and Lachhmi Kant Thakur, together with other persons, were the owners of the other share in the said village.

It was further alleged that the above-mentioned two defendants had purchased the plaintiff's share in the said village in the name of their relation, the first defendant, Suraj Narayan Chaudhuri, at a grossly inadequate price, viz., Rs. 1,350, the real value of the plaintiff's share being at least Rs. 16,000.

There were nine issues raised at the trial, but it is necessary to refer to two only—for the purpose of disposing of this appeal.

(1) The plaintiff alleged that the second and third defendants had acted fraudulently and in collusion with the plaintiff's *patwari* and had bribed him to allow the payment of revenue to become in arrear, so as to bring the plaintiff's share to sale. Both the Courts in India held that the plaintiff had failed to prove her case of fraud and collusion, and the learned counsel who appeared for the plaintiff at the hearing of this appeal did not contest the correctness of that finding.

(2) The other issue, to which reference is necessary, was numbered 4 in the trial court and was as follows :—

“ Whether the sale was held in absence of arrears of Government revenue as alleged.”

The Subordinate Judge found this issue in favour of the plaintiff and directed that the suit be decreed with costs, that the plaintiff should recover possession of the said share in the village on depositing the amount of consideration within one month and that the amount of mesne profits should be ascertained at a later stage.

The defendant, Suraj Narayan Chaudhuri, appealed against the above-mentioned decree to the High Court at Patna, making the plaintiff and the second and third defendants respondents.

The learned Judges of the High Court held that there was an arrear of revenue, in respect of which the share of the plaintiff was liable to be put up for sale, and that the sale of the 6th June, 1919, was valid.

They therefore allowed the appeal, set aside the decree of the Subordinate Judge and dismissed the plaintiff's suit with costs.

The plaintiff's case in respect of the above-mentioned issue was that her share in the property was sold on account of her alleged default in the payment of the *chait kist*, or instalment, that the said *kist* was payable on the 28th March, 1919, that by reason of Section 2 of Act XI of 1859 the said *kist* did not become an arrear of revenue until the 1st April, 1919, and that the latest date for the payment of such arrear of revenue fixed by the Government in pursuance of Section 3 of the said Act was the 7th June, 1919. Consequently, it was contended that the collector had no jurisdiction to put up the property for sale on the 6th June, 1919.

Their Lordships have examined the documents in this case, which include the Land Revenue and Road Cess and process Tauzi Ledger, and the Land Revenue Tauzi Roll relating to the estate in question.

It appears that there was a separate account in respect of the plaintiff's share, and the revenue in respect thereof was payable in four instalments, viz., the 7th June, the 28th September, the 12th January and the 28th March.

The alleged arrear of revenue, in respect of which the plaintiff's share was sold, was Rs. 45-7-3, and in their Lordships' opinion there is no doubt that the above-mentioned sum was due in respect of the March *kist* and was payable on the 28th March, 1919.

This sum, however, did not become an arrear until the 1st April, 1919, because, by Section 2 of Act XI of 1859, it is provided that :

“ If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kistbundee* of any *mehal* have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.”

The question then arises, when did the plaintiff's share become liable to be sold for default in payment of the said arrear of revenue.

Section 3 of the said Act provides as follows .

“ Upon the promulgation of this Act, the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder. And the said Board shall give notice of the dates so fixed in the official Gazette, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the Office of the Collector or other Officer duly authorised to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs, and at every Thannah station of that district ; and the dates so fixed shall not be changed except by the said Board by advertisement and notification, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.”

Their Lordships' attention was drawn to the notification issued by the Board of Revenue at Calcutta in pursuance of the above-mentioned Section 3, dated the 6th August, 1910 (published in the *Calcutta Gazette* of 1910) which it was stated was applicable to the area in question and which runs as follows :—

“ In pursuance of Section 3 of the Bengal Revenue Sales Act, 1859 (XI of 1859) and in supersession of all previous orders on the subject, the Board of Revenue notify that the following are the latest dates for the payment of arrears of revenue and of demands which are recoverable as arrears in default of which payment the estates in arrear will, except as provided in the said Act, be sold by public auction to the highest bidder.

“ (1) In the following areas.”

The entries in the said notification material to this case are as follows :—

<i>Area.</i>	<i>Latest dates for payment</i>		
In districts where the Fasli era prevails	<table border="1"> <tr> <td style="padding: 2px;">Estates paying an annual revenue exceeding Rs. 100</td> <td style="padding: 2px;"> 7th June. 28th September. 12th January. 28th March. </td> </tr> </table>	Estates paying an annual revenue exceeding Rs. 100	7th June. 28th September. 12th January. 28th March.
Estates paying an annual revenue exceeding Rs. 100	7th June. 28th September. 12th January. 28th March.		

The estate in question is in a district where the Fasli era prevails and the annual revenue exceeded Rs. 100.

Their Lordships are of opinion that the plaintiff's contention was correct.

The sum of Rs. 45-7-3 was payable on the 28th March, 1919. It, however, was not an arrear until the 1st April ; the last date, therefore, for payment of such arrear under the notification could not be the 28th March ; but the last date for payment was the 7th June, 1919.

Under Section 3 of the said Act the plaintiff's share in the estate was not liable to be sold for default of payment of the said arrear of revenue until the expiration of the last day for payment, viz., the 7th June, 1919.

Consequently the sale, which was held on the 6th June, 1919, was invalid, and must be set aside.

The learned Judges of the High Court held that the last date fixed for payment was the 28th March, 1919, and consequently that the collector had jurisdiction to put up the property for sale on the 6th June, 1919.

They based their decision on the construction of a document, exhibit " B," which they said was the only evidence which the plaintiff adduced in support of her case. The said document was a notice issued by the collector under Section 7 of the said Act, which provides for notice to be given to ryots forbidding them to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment.

The said notice was as follows :—

" No. 3. Proclamation forbidding *raiyats* to pay rent to defaulters.

" Section VII, Act XI of 1859.

(Tirhut Division.)

Darbhanga Collectorate.

" Ladugaon, pargana Bachhoor, Police Station Madhubani.

" Whereas a sum of Rs. 45-7-3 is due on account of arrears of revenue for the period ending the 21st Chait, 1326, corresponding to the 28th March, 1919, in respect of T. No. 554, having a *sadar jamu* of Rs. 167-8-3, lying within the jurisdiction of this Court, for the realisation of the same, the 6th of June, 1919, is hereby fixed as the date of sale by auction. A notification is, therefore, issued in the name of Musammatt Saroshwati Bahuria forbidding all the tenants as well as the co-sharers of the said *mahal* to pay to the defaulting proprietor their dues accruing after the last day (fixed) for payment of Government revenue on pain of **not being** allowed credit in their accounts with the purchaser in respect of the sum so paid.

" This the 14th day of May, 1919.

(Signed) " RAI KRISHNA BAHADUR, for Collector."

With respect to the learned Judges, their Lordships, as already intimated, are unable to agree with that decision.

In the first place, the said notice, exhibit "B," was not the only evidence on which the plaintiff relied, and in the second place in their Lordships' opinion the said notice did not specify the 28th of March as the last date of payment.

The 28th March, 1919, was mentioned for the purpose of identifying the period in respect of which the revenue was due, viz., the period ending the 21st Chait, 1326, "corresponding to the 28th March, 1919." The last date fixed for payment of the Government revenue was not specified in the said notice.

For these reasons their Lordships are of opinion that the appeal should be allowed, the decree of the High Court dated the 19th February, 1925, set aside, and the decree of the Subordinate Judge dated the 25th June, 1921, restored.

The respondents must pay the costs of the plaintiff in the High Court and of this appeal, and their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

MUSAMMAT SARASWATI BAHURIA

2.

SURAJNARAYAN CHAUDHURI AND OTHERS.

DELIVERED BY SIR LANCELOT SANDERSON.

Printed by

Harrison & Sons, Ltd., St. Martin's Lane, W.C.2,

1931.