Privy Council Appeal No. 112 *of* 1916.

Bengal Appeal No. 212 *of* 1914.

Raja Joyti Prashad Singh Deo Bahadur - *Appellant,*

v.

Kumud Nath Chatterji and Others - - *Respondents,*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM, IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF **THE** PRIVY COUNCIL, DELIVERED THE 21ST MARCH, 1918.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD SUMNER.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a decree of the High Court Fort William, in Bengal, affirming a decree of the Subordinate Judge of Burdwan. The respondents as plaintiffs brought a suit to recover 6,848 rupees 8 annas, being the amount of *patni* rents for the years 1902–1910, paid by them, as they alleged, although not due, in order to save their lands from sale under the powers conferred on zemindars by section 14 of Regulation VIII of 1819.

The appellant, on whose behalf as having rights conferred on a zemindar, it had been proposed to put the power of sale in force, contended, in the first place, that the money could not now be recovered, on the ground that even if not legally due it was paid voluntarily, or, if otherwise than voluntarily, as the result of proceedings in which the respondents had not chosen to defend themselves, and which consequently could not be reviewed. In the second place, he contended that the amount paid was due under the provisions of "The Chota Nagpur Encumbered Estates Act" (6 of 1876).

The facts do not appear to be obscure, and if the appellant's

contentions are right on either of the points stated he may be entitled to succeed. As, however, their Lordships are of opinion that the argument addressed to them from the Bar fails on both points, they have not found it necessary to call on the respondents to support the judgments in the Courts below, either on the two questions referred to, or on certain minor points which their Lordships did not consider to be tenable.

The appellant is Raja of Pachete, in Chota Nagpur. He succeeded to the title and estates on the death of his grandfather, the late Maharajah Nilmoni Singh Deo. The late Maharajah, in 1887, borrowed from one Mahesh Chandra Chatterji, a resident of Madanapur, in Burdwan, 22,435 rupees, giving the latter security in the form of a usufructuary mortgage of lands constituting four lots: three in the district of Bankara, and one in the district of Burdwan. Of these four lots the Maharajah had previously granted *patni* leases to Mahesh Chandra Chatterji. The respondents are the successors in title of the latter in respect both of the leases and of the mortgage security. All of the four lots, the subjects of the leases and the mortgages, lie outside the boundaries of Chota Nagpur.

The mortgage was effected by a sudbandhaki mortgage bond under which it was stipulated that interest at the rate of 14 annas per 100 rupees, equivalent to $10\frac{1}{2}$ per cent. per annum, should be payable, and that this interest, which was substantially equivalent to the amount of the annual rents payable under the *patni* leases, should be set off as against the interest until repayment of the principal sum due under the mortgage.

In 1895 the affairs of the late Maharajah having become embarrassed, the provisions of the Chota Nagpur Act were applied to his case. The language and scope of this Act their Lordships will refer to later. For the present it is sufficient to state that the management of the Maharajah's estate was vested in a manager appointed under section 2 of the Act, and that a vesting order appears to have been published in the "Calcutta Gazette," in terms wide enough to apply, if the Act enabled it to do so, to all his immovable property both within and outside the boundaries of Chota Nagpur. In response to a notice issued by the manager, the respondents, among other creditors, put in a claim. They submitted their mortgage bond with a petition praying for a settlement. The manager dealt with the claim under section 8 of the Act, and purported to settle the amount of principal due, and, what was in the circumstances still more important, to reduce the future interest to 6 per cent. per annum. He also determined that in every half-year the difference between the interest as thus reduced and the amount of the *patni* rents should be applied in satisfaction of the principal. The Commissioner, on whom jurisdiction to do so was claimed to have been entrusted by the Act, sanctioned the arrangement.

In 1907 the debts due by the estate were considered to

have been provided for, and the possession and management were made over to the appellant, who had succeeded to the title. Thereafter he collected from the respondents the amounts of surplus *patni* rents in question in the suit, on each occasion applying to the Collector of the district where the lots were situated for authority to put in force the summary provisions for sale for recovery of *patni* rents enacted by the Regulations of 1819 hereinafter referred to. The respondents, on receiving the successive notices to this effect authorised by the Collector, paid the amounts for the recovery of which they have brought the present suit. They appear to have made no formal protest, but the learned Subordinate Judge who tried the case has found that the circumstances were such that they cannot be taken to have made the payments gratuitously, a conclusion of fact from which the High Court did not dissent on appeal, and from which their Lordships do not dissent.

It is important to see what were the terms of section 14 of the Regulation of 1819, under which these payments were insisted on. Section 8 had enacted that zemindars in the position of the present appellant should be entitled in certain cases to apply for sales of *patni* tenures for arrears of rent. Section 14 defines in its first branch the procedure in case the talukdar objects. He may stop the sale by lodging the amount demanded. He may also bring a suit and obtain a reversal of the sale and damages. By its second branch the section provides that if the talukdar desires to contest the zemindar's demand he may apply for a summary investigation. If this takes place and an award results in time the effect of the award is to prevail. But if the proceedings be still pending the sale is none the less to take place unless the amount claimed be deposited, and if such deposit is not made the talukdar is to have no remedy excepting by a regular action for damages and reversal of the sale. Under an amendment of the Regulation passed in 1832 the conduct of the proceedings in regard to such sales is given to the Collector, Deputy Collector or Head Assistant.

Their Lordships are of opinion that the procedure provided for by section 14 is such as not to put those submitting to pay money under it in the position in which they would have found themselves had they paid a claim brought against them in an ordinary suit in which they could have set up a full defence but had failed to do so. In such a case those who pay lose their right to resist however good, because, having had the full opportunity of doing so which the law allows them once for all, they have not availed themselves of the opportunity so given. But section 14 expressly recognises the right to bring a separate suit in an ordinary Court, the proceedings before the Collector notwithstanding. If the purchaser at the sale impeached is made a party, the sale may even be set aside. All the talukdar gets by demanding a summary investigation before the Collector is an award the application for which will not stop the sale. The only step by which the sale can be stopped is by a deposit

of the full amount claimed, and when this is done the question of title remains capable of being raised in an ordinary suit. Their Lordships are accordingly of opinion that the rule which prevents a person from recovering back money which he has paid on a claim in legal proceedings to which he might have set up a defence but has failed to do so, has no application here. This conclusion is, under the circumstances already referred to, fatal to the first branch of the case presented by the appellant. On the argument addressed to them on this part of the case they have only to add the observation that the proceedings before the Collector are of an administrative rather than a properly judicial character. The zemindar who has a power of compelling a sale is to exercise this power through the instrumentality of the Collector himself, who acts, not magisterially, but ministerially, and who has, in the true view of his functions, no capacity to give effect to any enquiry he may make into title comparable to the capacity possessed by an ordinary judicial tribunal.

Their Lordships now turn to the second argument by which the learned counsel for the appellant supported the case made. This argument turned on the question whether the powers conferred by the Chota Nagpur Act extend to land outside the limits of Chota Nagpur. The language of the Act is obscure and their Lordships have found it necessary to look at the whole of its provisions somewhat closely in order to arrive at a conclusion on the point. The preamble is material, for it defines the purpose of the measure as the provision of "relief of holders of land in Chota Nagpur who may be in debt, and whose immovable property may be subject to mortgages, charges, and liens." *Primâ facie* the immovable property would therefore mean such property in Chota Nagpur, and this is borne out by the title of the Act, which is "The Chota Nagpur Encumbered Estates Act." Section 2 enacts that where "any holder of immovable property" (which plainly means here immovable property in Chota Nagpur, and there only) applies to the Commissioner stating that the holder of the "said property" is subject to, or that "his said property" is subject to, debts or liabilities, the Commissioner may, with the consent of the Lieutenant-Governor of Bengal, by Order published in the "Calcutta Gazette," appoint an officer called a manager, and vest in him the management of the whole or any portion of the immovable property of the holder. The application must state the particulars of the debts or liabilities to which the holder is subject, or with which his immovable property is charged, and also the particulars of the immovable property to which he is entitled. Section 3 provides that on the publication of the Order "all proceedings which may then be pending in any civil Court in British India in respect to such debts or liabilities shall be barred, and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void." Among other things, the section further provides that the holder and

his heir shall be incompetent to mortgage, charge, lease, or alienate their immovable property, or to grant receipts for rents or profits, and shall be incompetent to enter into any contract which may involve them in pecuniary liability. Section 4 confers on the manager during his management "of the said immovable property" large powers of management and of settling debts. Section 5 provides that, on the publication of the Order vesting the management in him, the manager is to publish a notice in English, Urdu, and Hindi (not, their Lordships observe, in the remaining languages vernacular in other parts of India), calling for the presentation of claims, and all claims not duly presented are to be barred. Section 8 enables the manager to determine the amounts of principal justly due to the creditors of the holders of the property and to the mortgagees on it. By section 9 the manager may enquire into the consideration given for leases and, if it appears insufficient, cancel them. Section 10 gives an appeal against proceedings of the Collector to the "Deputy Commissioner within whose jurisdiction the property is situate," if not himself the manager. Sections 17 and 18 confer on the manager power to lease and to mortgage and sell (in the latter cases with the assent of the Commissioner). Section 19 enables the Lieutenant-Governor of Bengal (within which Chota Nagpur is situate) to make rules for the administration of the Act. Section 23 saves the jurisdiction of the Courts in Chota Nagpur in certain kinds of suits relating to immovable property brought under the operation of the Act.

Their Lordships have not had before them the Order published in the "Calcutta Gazette," by which the Commissioner appointed the manager in the present case, and vested in him the management of some or all of the immovable property of the late Maharajah; but however wide the terms of this Order may have been, the scope of its operation depended on the scope of the Act itself. After considering the Act as a whole, their Lordships have arrived at the conclusion that the primary intention to be collected from its language is that of providing, by a measure of local application, for the relief of the burdens affecting the land within Chota Nagpur owned by a class of landholders there. The governing purpose related to a particular locality. It is not a statute analogous to a Bankruptcy Act, the controlling purpose of which is provision for creditors in a liquidation. To this end section 16 confers the jurisdiction requisite to enable the manager to recover immovable property in the possession of a mortgagee or vendee in the Court of the Deputy Commissioner within whose jurisdiction the property is situate. But in Regulation Districts, where there is no Deputy Commissioner, these words would be inapt, and the inference is that they were intended to apply only to immovable property in Chota Nagpur, where a Deputy Commissioner has jurisdiction. This conclusion is borne out by section 23, which saves, as already observed, the jurisdiction of the Courts of Chota

Nagpur over certain questions, and not the corresponding jurisdictions of Courts outside it.

Their Lordships agree with the views of the scope of the Act expressed by the learned Judges who decided the case of *Bhicha Ram Sahu* v. *Bishambhar Nath Sahi* (16 Calcutta Law Journal Reports, 527). They think that the Act has no application to immovable property outside Chota Nagpur. The main purpose is, as they have already observed, the protection of zemindars within that district, and any provisions which affect rights to enforce in jurisdictions outside it personal debts or liabilities are merely ancillary to the main purpose of the Act, which is directed to improving the position of persons owning land within it. If this be so, no claims *in rem* of land outside it ought to be construed as affected by the merely general and ambiguous expressions which the Act contains.

Their Lordships will humbly advise His Majesty that the appeal should be dismissed, with costs.

In the Privy Council.

RAJA JOYTI PRASHAD SINGH DEO BAHADUR

v.

KUMUD NATH CHATTERJI AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

PRINTED AT THE FOREIGN OFFICE BY C. R. HARRISON.

1918.