

Privy Council Appeals No. 51 of 1918.

Bengal Appeals Nos. 179 to 187 and 189 to 195, 198, 199, 203 and 204 of 1914.

The Midnapur Zemindari Company, Limited - - - *Appellants*

v.

Uma Charan Mandal and others - - - - *Respondents*
(20 Consolidated Appeals)

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 3RD JUNE, 1919.

Present at the Hearing :

VISCOUNT CAVE.

LORD PHILLIMORE.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

These are consolidated appeals from twenty decrees, dated the 1st June, 1914, of the High Court at Calcutta, which reversed decrees, dated the 30th September and the 30th November, 1910, of the District Judge of Manbhum, which had affirmed decrees, dated the 21st March, 1910, of the Subordinate Judge of Purulia. The decrees of the High Court which are the subject of these consolidated appeals dismissed the suits, which were suits for a declaration of title and for *kas* possession by the eviction of the defendants from lands held by them severally in pergunnah Barahabhum and for such other reliefs as the plaintiffs might be entitled to.

The plaintiffs' case was that they were successors in title of Robert Watson & Co., who, on the 8th March, 1885, obtained a *patni* lease, which included the lands in question,

from Rajah Brajakishore Singh, the then Zamindar. Mr. H. Mathewson, in whom were then vested the rights of Robert Watson & Co., under the *patni* lease, on the 25th June, 1906, conveyed all his rights in the *patni taluk* to the plaintiffs. Under the *patni* tenure there was an old under-tenure held by one Sharup Ganjan Singh, whose interest therein was purchased in 1899 by Rajah Jagabandhu Singh at a sale in execution of a decree against Sharup Ganjan Singh. Rajah Jagabandhu Singh made default in payment of rent due by him to the plaintiffs, and on the 19th August, 1908, the plaintiffs obtained a decree for Rs. 104 annas 13, and on the 7th December, 1908, the under-tenure of Rajah Jagabandhu Singh of the lands in question was, in execution of that decree of the 19th August, 1908, sold at a Court sale under Bengal Act 8 of 1865, and was purchased by the plaintiffs, who claim to have thereby acquired it free from all incumbrances within the meaning of section 16 of that Act on the ground that such rights as the defendants or any of them had in the lands were incumbrances free from which under that section the plaintiffs acquired by that purchase the under-tenure of Rajah Jagabandhu Singh.

The case of the defendants in answer to the plaintiffs' claim may be briefly summarised as follows :—

1. That the sale of the 7th December, 1908, was not held in accordance with the requirements of sections 4 and 5 of Act 8 of 1865.
2. "That the sale held on the 7th December, 1908, was not a public sale, but that it was a fraudulent device on the part of the plaintiffs and Rajah Jagabandhu Singh to give to a private sale the appearance of a public sale."
3. That the lands which were sold did not constitute an under-tenure, but only part of an under-tenure.
4. That the incumbrances were in existence before the under-tenure was created, and could not be avoided by the plaintiffs.

The suits in which these appeals have arisen were tried by the Subordinate Judge of Manbhumi. He fixed a number of issues for trial, the most material of which in this appeal was the seventh: "Were the rent-decree and sale in execution of the same fraudulent, collusive and illegal?" Evidence was recorded by the Subordinate Judge bearing on the seventh issue. It was contended on behalf of the defendants that from the fact that Rajah Jagabandhu Singh had not paid or tendered before the sale the amount decreed, it should be inferred that he and the plaintiffs had corruptly agreed that his under-tenure should be sold to the plaintiffs in execution of the decree, and it was endeavoured to be proved that such an agreement had been made between them in order to defeat the rights of the defendants as subordinate holders, and that in order to carry out that agreement there should be no proclamation of the intended sale.

As to the seventh issue, the Subordinate Judge stated in his judgment as follows :—

" *Seventh Issue.*—It was contended in the written statements that the rent-decree and proceedings in execution of the same were fraudulent collusive and illegal. But at the trial it was not seriously contended that the decree was collusive and fraudulent and illegal. There is not an iota of evidence on the record to show that the arrears were not due and the decree for rent was passed as a result of collusion between the plaintiffs and Raja Jagabandhu Singh. The latter was examined as a witness for the defence and he did not say so. There was no appeal against the decree and it could not by any means be held to be illegal.

" The next question for decision is whether the proceedings in execution of the decree were collusive and fraudulent. The case for the defence, as set forth in the written statements, was that from before the decree there was an arrangement between the plaintiffs and the defaulter Raja Jagabandhu Singh that the tenure would be purchased by the plaintiffs in a sale for arrears of rent, so that they could avoid the under-tenures created by Sharup Ganjan Singh, and in furtherance of that object the sale-proclamation was not published but suppressed altogether and the defaulter did not intentionally deposit the amount due under the decree for rent, which was only Rs. 100 and odd, and the property was knocked down for a sum which had been fixed as the price of the property. That the sale-proclamation had been suppressed as a result of the negotiations between the plaintiffs' agents and the defaulter Raja Jagabandhu Singh was not stated by him or by his Dewan, Girish Chandra Baguli, who had been looking after the cases for the defence from the very beginning. On the other hand, he deposed that he came to know of the date of the sale from a copy of the sale-proclamation brought to him by a Digar residing near Pandra. The evidence adduced by the plaintiffs about the service of the sale-proclamation in the mofussil is very meagre, and the statements of the witnesses examined by them are full of discrepancies and contradictions. But we must make allowance for loss of memory on the part of the peon and the identifier who went to the villages about a year and a half ago. Then the class of persons to which the witnesses belong, are apt to make mistakes in the matter of details. It is quite probable that the peon and the identifier did not go to all the villages of the taraf, but I do not think the proclamation was suppressed altogether. I believe that the sale-proclamation was published at least at Haradah. It appears that the sale was advertised in the local vernacular paper and the plaintiffs' agent must have known that the news about the property being brought to sale could not be kept secret. The fact that the defendants did not try to deposit the arrears which amounted to a trifling sum, if they came to know of the sale, may be due to their belief that the defaulter would not allow the property to be sold, especially before the decision of the appeal to the High Court."

There was, in fact, no evidence of any collusion between the plaintiffs and Rajah Jagabandhu Singh, but there was evidence that one Jiban Baku, who was a Naib in the employment of the plaintiffs, but who had no authority to make any agreement on their behalf, had promised to get the plaintiffs to bid up to Rs. 40,000 for the property at the sale. As to him the Subordinate Judge found that he had agreed to use his influence with the plaintiffs so that the property might be sold at a fair price, but that there was no evidence that he was authorised by the plaintiffs to make any negotiations with Rajah Jagabandhu Singh. The Subordinate Judge found that the sale was not fraudulent or collusive.

The District Judge, before whom the appeals from the decrees of the Subordinate Judge came, stated in his judgment that: "Before me two points and two points only have been argued. These points are common to all the appeals." These points were as to the nature of the tenure which was sold at the sale of the 7th December, 1908, and as to whether the rent-decree was a fraud against the defendants and the sale was fraudulent. As to the first of these two points, the District Judge agreed with the Subordinate Judge in finding that the tenure which was sold for arrears of rent was a separate tenure and had been created by a *ruffanama* in 1884. On the second of the above points the District Judge stated that the facts of the sale were suspicious and he had examined the evidence very carefully, but that "on the whole I am satisfied that, although there may have been a good deal of sharp practice over this sale, there has not been fraud in a legal sense such as would vitiate the proceedings." The District Judge examined the evidence with care. He agreed with the Subordinate Judge that there was no evidence to show that the decree for the rent in arrear was in any way collusive. As to the sale the District Judge came to the conclusion that the facts proved were not sufficient to constitute fraud and that fraud could not be inferred from them. He found that the sale was not fraudulent and collusive and could not be held to be inoperative against the defendants, and stated:—

"My findings in this case, therefore, agree in every respect with those of the learned Subordinate Judge. The plaintiffs are, therefore, entitled to annul all the encumbrances which have been created subsequent to 1884 when this tenure which was sold for arrears of rent, was created."

The District Judge then proceeded to consider whether the incumbrances which the plaintiffs claimed as inoperative as against them had been created before or after 1884, and made decrees which were appealed to the High Court.

In the appeals to the High Court the learned Judges stated that the questions whether Sharup Ganjan Singh had held one or two tenures and what was the effect of the deed of compromise of the 6th March, 1884, were of considerable nicety and by no means free from doubt, but that it was not necessary to consider these questions as the defendants were entitled to succeed on the ground that the sale of the 7th December, 1908, was, in their opinion, "brought about and accomplished under circumstances which make it in essence a private sale, and disentitled the purchaser to claim the privileges accorded by law to a purchaser of an entire tenure at a real sale under the Bengal Rent Law." These learned Judges stated their conclusions as follows:—

"In the case before us, the default was wilfully made; the sale was deliberately brought about, though the judgment-debtor was able to pay the judgment-debt; the purchasers and the price to be paid by them were settled in advance; here we have all the characteristics of a private sale. It was clearly an abuse of statutory provisions for sale of tenures in execution of decrees for rent, to bring about designedly a sale under

such circumstances, so that the rights of under-tenure-holders might be destroyed, an unencumbered title conveyed to the purchaser and the maximum of benefit conferred upon the defaulter. The transaction in all its characteristics was a private sale, and if we were to regard it as a real rent-sale, we would have to hold that an unscrupulous tenure-holder may successfully avail himself of the stringent provisions of the rent law, solely with a view to injure subordinate tenure-holders and to profit by their detriment, while providing, by means of a secret arrangement with the intending purchaser, ample safeguards against any possible loss to himself by the transaction. The conclusion appears to be irresistible that the plaintiffs must be treated as in no better position than purchasers by a private transfer. In this view, their claim for annulment of the under tenure of the defendants cannot be sustained."

Upon that view of the facts and of the law they dismissed the suits.

It appears to their Lordships that the conclusions of the High Court are inconsistent with the findings of fact on first appeal, by which the High Court was bound. If the sale had been the result of a corrupt agreement between the under-tenure holder and the purchaser at the sale, the purchaser might no doubt lose the benefit of section 16 of the Bengal Act of 1865, and especially if the default in payment of rent had been deliberately incurred in furtherance of such an agreement. But in the present case there was no evidence of such a wilful default having been made ; and the finding of the Subordinate Judge, with which the District Judge concurred, that there had been no fraud or collusion, was sufficient to entitle the plaintiffs to the decree. The High Court was not entitled to go behind the findings of fact of the District Judge, which did not result from the misconstruction of a document or the misapplication of law or procedure, but upon the oral evidence in the case ; and the suits should not have been dismissed.

Their Lordships will humbly advise His Majesty that these appeals should be allowed with costs, that the decrees of the High Court under appeal dismissing the suits should be set aside, and that the suits should be remitted to the High Court to be disposed of in the appeals and cross-objections according to law.

In the Privy Council.

THE MIDNAPUR ZEMINDARI COMPANY,
LIMITED

v.

UMA CHARAN MANDAL AND OTHERS.
(20 Consolidated Appeals.)

DELIVERED BY SIR JOHN EDGE.

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