

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Balkishen Das and others v. Charles F. R. Simpson, from the High Court of Judicature at Fort William, in Bengal; delivered 14th May 1898.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

The Appellants, Plaintiffs in the present suit, were, until the 5th September 1891, proprietors and in possession of a separate 5-annas share of the village of Shahzadpore Anderkilla, situate within the Collectorate of Mozufferpore.

Down to the year 1884, the jumma or annual revenue payable to the Government in respect of the said 5-annas share was Rs. 89. 8. 7. In the beginning of 1884, the Board of Revenue sanctioned a reduction of the revenue annually payable, to the extent of Rs. 6. 9. 10, thus fixing the jumma for the future at Rs. 82. 1. 14. 9 instead of Rs. 89. 8. 7; and their decision to that effect was duly communicated to the Collector of Mozufferpore by a letter dated the 3rd March 1884. From that date until the year 1891, the owners for the time being of the 5-annas share continued to make yearly payments to the Collector to account of the jumma.

It now appears, and it is not disputed, that in 1884 the Collector, on receipt of the decision of

the Board of Revenue, erroneously entered in his books the abatement of jumma which they had granted, as applicable to another estate in which the owners of the 5-annas share of Shahzadpore Anderkilla had and have no interest. The mistake which was thus committed by the Collector, or some of his staff, must have been due to their ignoring or disregarding the plain terms of the decision of the Board of Revenue which had been sent to them. It has been suggested, in both Courts below, that the error may have been induced by the fact that, in the letter which enclosed the decision of the Board, there was a clerical error in giving the Towzi number of the 5-annas share in question ; but that explanation, if it be correct, can afford no excuse for failure to give effect to the decision itself.

The result of the mistake was, that, during a period of eight years, from 1884 to 1891, whilst the proprietors of the 5-annas share were duly credited in the books of the Collector, with the full amount of the payments annually made by them on account of revenue, they were wrongly debited in each year with Rs. 89. 9. 10, being the amount of the jumma before its reduction. In consequence of that error in the debit side of the account, the books of the Collector shewed a balance as due by the Appellants, in March 1891, being the end of the revenue year 1890-91, in respect of the revenue payable for the preceding year ; whereas, if the annual jumma had been charged at its reduced rate, in terms of the order of the Board of Revenue, the books would have shewn a balance of Rs. 44. 15. 3 at their credit.

The Collector then proceeded to sell the 5-annas share in question, as for arrears of jumma due by the Appellants, in supposed compliance with the provisions of Act XI. of

1859. The property was sold by auction on the 5th September 1891, when it was purchased by Charles F. R. Simpson, who is the sole Respondent in this appeal.

The Appellants thereafter presented an appeal against the sale to the Commissioner of Tirhoot, under Section 2 of Bengal Council Act VII. of 1868, which was rejected by the Commissioner as being out of time. On the 27th July 1892, they brought this suit before the Subordinate Judge of Tirhoot, against the auction purchaser, the Respondent in this Appeal, and also against the Collector of Mozufferpore, as representing the Secretary of State for India, praying to have the sale set aside, and other relief. The Defendants appeared and lodged written statements, in both of which it was pleaded that the action was not cognizable by the Civil Court, by reason of the Plaintiffs having failed to appeal in due time, under the provisions of Section 2 Act VII. of 1868, B.C. The present Respondent asserted, that the suit was "based upon false allegations;" and the other Defendant alleged that the Plaintiffs had taken no steps to have the abatement taken into consideration, and had for several years continued to pay the original Government revenue. It has not been shown that there are any false allegations in the plaint, or that the Plaintiffs, after the abatement was granted, continued to pay the old jumma. They made payments to account of revenue, which in the third of the eight years already mentioned was of the same amount as the old jumma, in three of them were in excess of it, and in four of them were below its amount. There is nothing to show that any of these payments were made on account of the old jumma, with the exception of the erroneous entries in the Collector's books, for which he alone was responsible. It was not within the right, and it certainly was not the

duty of the Appellants, to examine and check these entries.

The Subordinate Judge, on the 1st September 1893, held that the suit was not excluded by the failure of the Plaintiffs to present an Appeal within due time, under Section 2 Act VII. of 1868, B.C. ; that, in point of fact, there was no arrear of revenue due by the Appellants, at the time when their property was sold ; and that the sale was illegal, and injurious to the Appellants. He accordingly declared the sale to be inoperative, and decreed possession of the property sold to the Plaintiffs, with costs.

The Respondent in this Appeal brought that judgment under the review of the High Court at Fort William, when two of the learned Judges, Sir Henry Prinsep, and Chunder Madhub Ghose, J.J., reversed the decree of the Subordinate Judge and dismissed the Appellants' suit, with costs to the present Respondent in both Courts.

The following were the grounds assigned for their decision by the learned Judges of the High Court. They held, in the first place, that, inasmuch as there had been no adjudication by the Commissioner upon the objections stated to the sale by the Appellants, these objections were excluded from the cognizance of the Civil Courts by Section 33 of Act XI. of 1859. If that course were permitted, the learned Judges observed, that it would " permit a " defaulter in the payment of Government revenue, " who desired to set aside a sale for irregularity " with substantial injury resulting therefrom, " practically to do so without any appeal to the " Commissioner at all." In the second place, they held that the Appellants were debarred, in the present suit, from obtaining " any re-adjustment of account," by reason of Section 8 of the Revenue Sale Law of 1859, because, " in order

“ to comply with that law, it was necessary for  
 “ them to have a transfer made to their credit  
 “ of any amount to which they might be entitled,  
 “ by reason of the abatement ordered by Govern-  
 “ ment, and which had not been properly carried  
 “ to their credit in the Collector’s Register.”  
 They were accordingly of opinion that the Appellants were without a remedy, although they indicated that the mistake was unfortunate,  
 “ and may also be said to be due to carelessness  
 “ on the part of the office of the Collector.”  
 Their Lordships do not think that the decision of the learned Judges can be maintained upon either of these points, which they will proceed to notice separately.

Section 3 of the Act XI. of 1859 provides, that, in default of payment of revenue, within the time appointed for each district by the Board of Revenue, the “ estates in arrear ” in those districts, “ shall be sold at public auction to the highest bidder.” 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 1859, 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 3 of Act VII. (B. C.) of 1878, 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 Shahzadpore 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 books 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. Their Lordships are accordingly of opinion that it was rightly held by the Subordinate Judge, that he had jurisdiction to entertain the objection to the sale to which he gave effect, although the point had not been considered and disposed of by the Commissioner.

The observations made by the learned Judges, in regard to the second point upon which their decision is rested, do not appear to their Lordships to be strictly accurate, either in fact or law. There is no question in this case about a transfer, from the account kept by the Collector for the Mehal 10,313, to the credit of the account kept by him for the 5-annas share of Shahzadpore Anderkill. The only error in the latter account consists, as already stated, in annually entering Rs. 89. 8. 7, instead of Rs. 82. 14. 9, to the debit of the Appellants. The payments made by the Appellants are correctly credited. In that state of the facts, their Lordships are unable to conceive what possible application the provisions of Section 8 of Act XI. of 1859 can have to the present case. The clause contemplates two cases only. The Appellants are not within the first of these, which relates to a defaulter to revenue, who claims a remission or abatement which has not "been allowed by the authority of the Government."

In the second case, it is enacted that the Collector's possession of money belonging to the defaulter, shall afford no answer to the default, unless the money stood in the defaulter's name alone and without dispute, or the Collector has failed, after application by the defaulter, to impute his money towards payment of the revenue. The enactment has no application, except there be (1) default in payment of the revenue, and (2) possession by the Collector of money of the defaulter not indisputably placed to his credit. But the Appellants were not in default. All monies paid by them have been correctly credited; and their alleged default, which is a pure fiction, is based upon erroneous debit entries, to which they were not parties.

Although the Secretary of State for India had been represented, in the Courts below, by the Collector of Mozufferpore, the Appellants did not join him as a party to the present appeal. Upon that ground, the Respondent pleaded, *in limine*, that the appeal taken to this Board was incompetent; and, at all events, that the hearing of the appeal ought to be delayed until the Secretary of State for India had been made a party to it. Their Lordships rejected the contention, which was maintained upon the mistaken view that a decree obtained by the Appellants in this suit against the Secretary of State, would constitute *res judicata*, in any question or proceeding between that Minister and the Respondent. In their opinion, the position of the Indian Secretary, in cases like the present, is correctly explained by Mr. Justice Mitter in *Bal Mokosud Lal v. Jirjudhan Roy* (9 Calcutta Rep. 276).

The Appellants, with the view of obviating the preliminary objection stated by the Respondent, presented an incidental petition for an order making the Secretary of State for India a party to the appeal. The application was opposed by

the Secretary of State, and was refused by this Board with costs. The Respondent, notwithstanding, persisted in his preliminary objection at the hearing of the appeal.

Their Lordships will humbly advise Her Majesty to reverse the judgment of the High Court, to restore the decree of the Subordinate Judge of Tirhoot, and to order the Respondent to pay to the Appellants the costs incurred by them before the High Court. The Respondent must pay to the Appellants their costs of this appeal, including their costs of the incidental petition already referred to.

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