

*Privy Council Appeal No. 105 of 1930.*  
*Bengal Appeal No. 3 of 1929.*

**Krishna Chandra Bhowmick** - - - - - *Appellant*

v.

**Pabna Dhana Bhandar Company, Limited (in Liquidation), and others** *Respondents*

FROM

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 30TH NOVEMBER, 1931.

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*Present at the Hearing :*

LORD THANKERTON.

LORD SALVESEN.

SIR LANCELOT SANDERSON.

SIR GEORGE LOWNDES.

[*Delivered by* LORD THANKERTON.]

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This is an appeal against a judgment and decree, dated the 23rd May, 1928, of the High Court of Judicature at Fort William in Bengal, which affirmed a judgment and decree, dated the 22nd July, 1926, of the Subordinate Judge of Pabna, whereby a sale for arrears of revenue was set aside.

There is an estate which forms Touzi No. 10 of the Pabna Collectorate. Respondents Nos. 2 to 11, who were the original co-proprietors of a share of this estate, opened a separate account for payment of their share of revenue, known as account No. 10/6, in terms of Section 10 of the Bengal Revenue Sales Act, No. 11 of 1859. Thereafter they mortgaged their interest in the separate account along with other property to the respondent company No. 1, who, on the 19th November, 1923, purchased the property along with others under a mortgage decree of sale obtained by them in 1918. Respondents Nos. 2 to 11 then instituted suits to set aside the mortgage sales, and these suits were finally disposed of by compromise on the 16th June, 1924; under the

compromise the sale in respect of No. 10/6 was set aside but respondent No. 1 retained their mortgage lien thereon.

On the 26th June, 1924, share No. 10/6 was sold by the Collector of Pabna for arrears of revenue under the Act of 1859, and was bought by the present appellant. After an unsuccessful appeal to the Commissioner of Revenue for the Division under Section 25 of the Act, respondent No. 1 brought the present suit on the 10th July, 1925, in the Court of the Subordinate Judge at Pabna for annulment of the sale, or alternatively for a declaration that the purchase of the appellant is subject to the mortgage lien of respondent No. 1 and for possession on the basis of that lien. It is not disputed that the conditions precedent to the jurisdiction of the Civil Court prescribed by Section 33 of the Act have been complied with in the present suit.

Twelve issues were settled at the trial, but, for the purpose of disposal of this appeal, only two need be referred to, viz. :—  
 “ 2. Was any arrear due justifying the sale by the Collector ? ”  
 and “ 10. Is the sale liable to be set aside on the ground alleged in the plaint ? ” The remaining issues related to various alleged irregularities in the proceedings leading up to the sale and the alternative relief asked for, and these have been dealt with in the Courts below, but their Lordships find it unnecessary to deal with them, as, in their opinion, Issue No. 2 was rightly answered in the negative by both Courts below, though their Lordships have come to that conclusion on somewhat different grounds, following a recent decision of this Board, which is referred to later. The opinions of the Courts below proceeded on a construction of the Act which must now be held to be erroneous, in view of the more recent decision of this Board just referred to.

It will be convenient to refer in the first place to the relevant sections of the Act of 1859. The sale of the Separate Account No. 10/6 was instituted by the Collector under the authority of Section 13, which provides as follows :—

“ Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of jumma assigned thereto.”

It is therefore clear that, in order to justify the sale of No. 10/6, (a) the estate must have become liable to sale for arrears of revenue, and (b) an arrear of revenue must be due from No. 10/6 according to the separate account. What is an arrear of revenue is to be found in Section 2, which provides as follows :—

“ 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 mahal 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 latest date for payment of arrears and the liability to sale are dealt with in Section 3, 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. . . . "

The section goes on to provide for notice by the Board of the dates so fixed in the official Gazette and otherwise. It is decided by the judgment of this Board in *Musammât Saraswati Bahuria v. Surajnarayan Chaudhuri* (13th January, 1931), 35 Cal. W.N. 444, that, before liability to sale attaches, there must be (1) the whole or a portion of a kist or instalment unpaid, (2) the conversion of such unpaid amount into an arrear on the first of the following month, and (3) the passing of the latest date of payment of such arrear, as fixed under Section 3 and the official notice of the Board of Revenue.

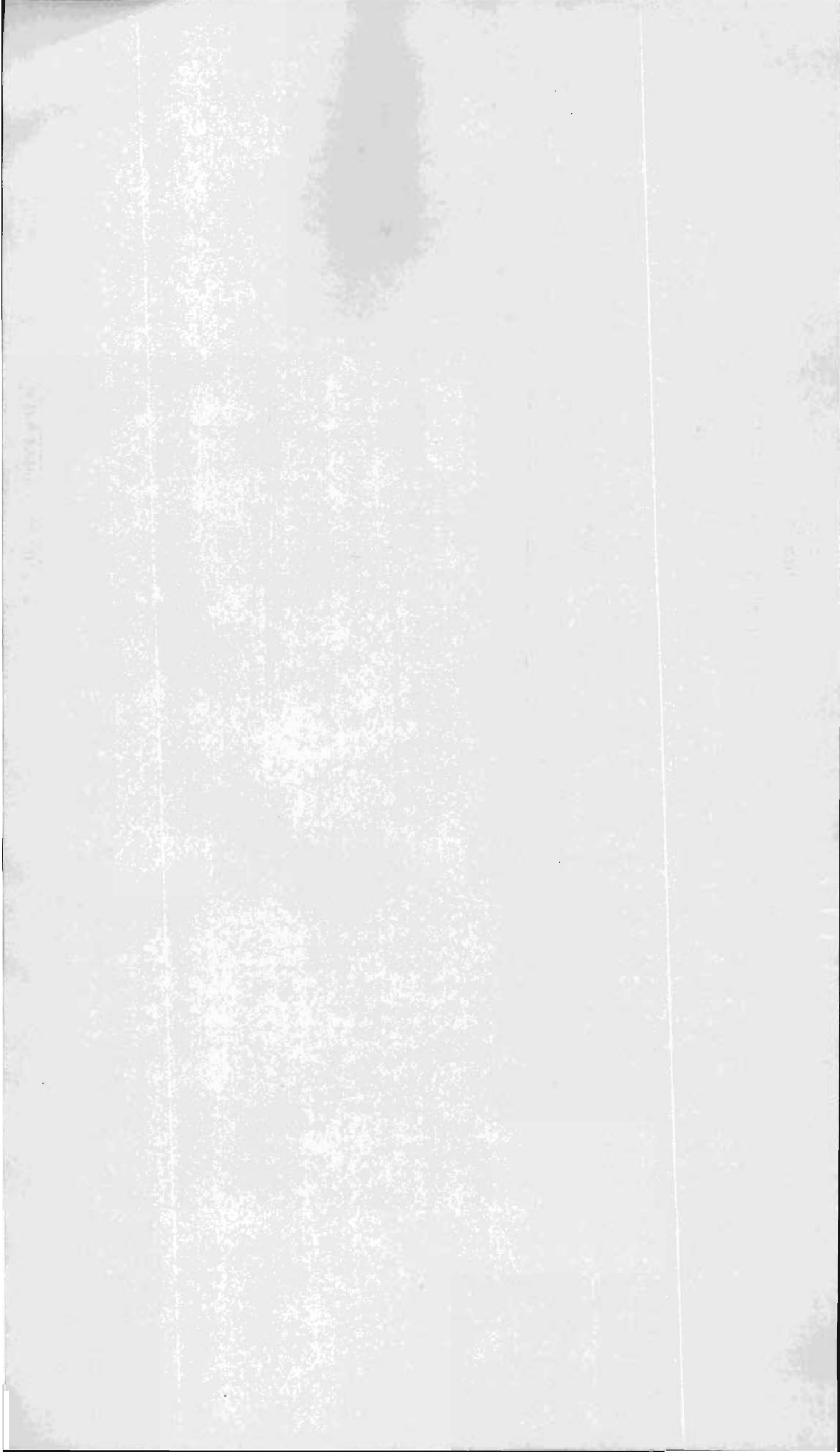
As regards the present case it is agreed that, by notice in the *Calcutta Gazette* of the 10th August, 1910, the dates of payment of instalments of revenue and the latest dates for payment of arrears were fixed as 28th June, 28th September, 12th January, and 28th March.

The admitted facts in the present case are, first, that the Collectorate account for the third kist of 12th January, 1924, showed a credit balance of 7 annas 4 pies on the general account of Touzi No. 10, and a debit balance of Rs. 35·2 annas in the separate account of No. 10/6, to satisfaction of which the Collector appropriated sufficient of the money deposited with him in terms of Section 15 of the Act; secondly, that in the accounts for the fourth kist of 28th March, the general account of Touzi No. 10 showed an unpaid balance of 6 annas 5 pies, but the separate account of share No. 10/6 showed that the sum of Rs. 20·13 annas, being the current demand of revenue in respect of the fourth kist, had been paid on the 27th March, 1924, and there was thus no unpaid balance in the separate account in respect of that kist.

Reverting to the provisions of Section 13, the only arrear of revenue of the estate which is said to justify the sale is the unpaid balance of 6 annas 5 pies of the fourth kist of the 28th March, 1924. But this unpaid balance could not be considered an arrear until the first of the following month, *i.e.*, the 1st April, 1924, and the latest day of payment was accordingly the 28th June, 1924—two days after the sale took place—

and the estate could not "become liable to sale for arrears of revenue" until after the 28th June, 1924. It is therefore clear that the sale of share No. 10/6 was invalid on this ground alone, and it is unnecessary to consider whether No. 10/6 was a share "from which, according to the separate accounts, an arrear of revenue may be due" within the meaning of Section 13; but it may be pointed out that the deficiency of Rs. 35·2 annas shown in the separate account of the January kist could not be considered an arrear until the 1st February, 1924, and there could be no default in payment until 12th March, 1924—and that only on the doubtful assumption that, in a question with the Collector, it remained unpaid after the latter had appropriated part of the deposited monies in satisfaction of it. But their Lordships find it unnecessary to consider this question.

Accordingly, their Lordships are of opinion that the sale should be annulled, and they will humbly advise His Majesty that the decree of the High Court of the 23rd May, 1928, should be affirmed and the appeal dismissed with costs.



In the Privy Council.

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KRISHNA CHANDRA BHOWMICK

v.

PABNA DHANA BHANDAR COMPANY, LIMITED  
(IN LIQUIDATION), AND OTHERS.

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DELIVERED BY LORD THANKERTON,

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1931.