

Purna Chandra Chatterjee Vs. Dinabandhu Mukerjee

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Court : Kolkata

Decided On : May-31-1907

Reported in : (1907)ILR34Cal811

Judge : Francis W. Maclean, C.J., ;Rampini, ;Brett, ;Woodroffe and ;Mookerjee, JJ.

Appellant : Purna Chandra Chatterjee

Respondent : Dinabandhu Mukerjee

Judgement :

Francis W. Maclean, C.J.

1. The question which has been referred for decision to this Bench, is as follows:-- 'Whether when it is found that notice has not been served under Section 10 of the Public Demands Recovery Act, 1895, and a suit is brought for the purpose of setting aside the certificate and the sale and for recovery of possession of the property, Article 12 or Article 120 of the second Schedule of the Indian Limitation Act applies to such suit.' The solution of this question depends upon the effect to be attributed to a sale held without service of notice under Section 10. If the sale be regarded as an irregular or illegal sale, it is an obstacle which the plaintiff must get over before he can recover possession; on this view he must ask to have the sale set aside within one year from the date of confirmation, as provided in Article 12 of Schedule II of the Limitation Act. If, on the other hand, the sale be regarded

as held without jurisdiction, and consequently null and void, the plaintiff need not sue to set aside the sale; he may sue to recover possession, within twelve years from the date of dispossession, as prescribed by Article 142, upon declaration that the sale is a nullity and has not affected his rights. The latter view has been uniformly adopted by this Court for several years in a series of decisions to which reference was made in the course of argument. The ground upon which these decisions are founded, appears to be, that it is only after the notice under Section 10 is served that the certificate acquires the force and effect of a decree which may be enforced and satisfied by the sale of the immovable property of the debtor. It has been argued on behalf of the appellant that this reason is unsound, and that under Section 8 of the Public Demands Recovery Act, every certificate made under Section 7, acquires as soon as it is made, the force and effect of a decree of a Civil Court. We are of opinion that this contention is well founded, and that the certificate, when duly made and filed, has, in so far as regards the remedies for enforcing it, the force and effect of a decree of a Civil Court notwithstanding that notice may not have been served under Section 10. It has been argued, however, on behalf of the respondents, that even if this view be maintained a sale of immovable property held without the issue of a notice under Section 10, is void, as the Collector has no jurisdiction to initiate execution proceedings against the debtor until a notice under Section 10 has been previously served upon him; in other words, that such a sale is without authority, because if there is no notice of the certificate, there is nothing to bind the immovable property of the debtor and to enable the Collector to sell. In support of this contention our attention has been invited to the form of the notice required to be issued under Section 10 (Schedule Form No. 4) and also to the provisions of Section 19 (Sub-section (1), the former, it is said, shows that the object of the notice under Section 10 is not merely to effect a general attachment of all immovable property of the debtor, but also to notify the demand to him, and to afford him facility either to contest or to satisfy it; the latter, it is suggested, indicates that the Collector has no jurisdiction to enforce and execute the certificate till the notice mentioned in Section 10 has been served, and the debtor has thus been apprised of the demand and allowed an opportunity to satisfy the same. In answer to this argument it has been contended on behalf of the appellant that as a certificate duly made is a decree for a specified purpose,

the Collector must be taken to have jurisdiction to execute it, and if he enforces it without service of notice on the debtor under Section 10, his act is not without jurisdiction, but amounts, at most, to irregular or illegal assumption or exercise of jurisdiction. The question raised is one of considerable nicety, and not free from doubt as no general test can be applied to determine whether in a given set of circumstances, an act is without jurisdiction and consequently void or only amounts to an irregular or illegal exercise of jurisdiction, and, therefore, merely voidable. It is clear, however, that the view put forward on behalf of the respondents, if adopted, does afford an intelligible basis for the rule uniformly followed for many years past by this Court, namely, that a sale held without service of a notice under Section 10 which is a condition precedent to the validity of the sale, is a sale wholly without authority and is a nullity. Under these circumstances, we are not prepared to dissent from this rule which has been followed in numerous cases. In this case it is admitted that no petition of objection was put in under Section 12 and we therefore express no opinion with regard to such a case as that dealt in *Ambica Prosad v. Gopal Buksh Das* (1901) 1 C.L.J. 550. We, therefore, upon the facts stated, answer the question referred to us, as follows: when it is found that notice has not been served under Section 10, and a suit is brought to set aside the sale and to recover possession of the property sold, Article 142 and not Article 12 of Schedule II of the Limitation Act, is applicable. In such a suit, the plaintiff need not ask that the sale should be set aside: he is entitled to recover possession upon the footing that the sale has not affected his title.

2. We desire to add that we deal merely with the question referred and that our judgment proceeds on the assumption that there is no other objection than that of limitation to the plaintiff's suit.

3. It was forcibly pointed out on behalf of the appellant that the application of the twelve years rule to sales of this description may lead to considerable inconvenience and possible hardship in individual instances, as the title of a purchaser, may, in this view, be liable to be attacked years after the sale, at a time when evidence of service of notice has disappeared or is no longer easily available. We were much impressed by this argument and in our opinion, this is a

matter which the Legislature should take into consideration with a view to an amendment of the law on the subject, so as to allow such suits to be brought only within a reasonably short period from the date when the purchaser is put in possession.

4. We may observe that in the present case, it has not been disputed before this Court that the certificate was made for an existing arrear. The certificate, therefore, cannot be cancelled, and no question arises as to whether the suit would be barred in so far as it is a suit to cancel the certificate.

5. With this intimation of our opinion, the appeal will go back to the Division Bench which referred it for final disposal.

6. The costs of this reference will be costs in the appeal.

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