

Sayed Ahamed and ors. Vs. SamsuddIn Ahamed and anr.

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Court : Kolkata

Decided On : Nov-29-1937

Reported in : AIR1938Cal275

Appellant : Sayed Ahamed and ors.

Respondent : SamsuddIn Ahamed and anr.

Judgement :

Nasim Ali, J.

1. This appeal arises out of a suit for setting aside the revenue sale of noabad taluk No. 20302 of the Chittagong Collectorate. The trial Court decreed the suit. On appeal the lower Appellate Court has dismissed it. Hence this second appeal by the plaintiffs. The point for determination in this appeal is whether upon the facts found by the lower Appellate Court the revenue can properly be said to have been in arrear so as to justify the sale under Act 11 of 1859. The facts found are these: The last date for payment of revenue, namely Rs. 3-7.0, was 28th June 1933. The plaintiffs sent from Rangoon by money order (not in rave, nue money order form) Rs. 3-7-0 on 8th June 1933. The Collector received it on 28th June 1933. In the coupon, number of the Taluk was correctly given, but it was stated to be 'P.S.', that is, 'permanent settled' and not 'noabad'. This money could not be credited to the account of the disputed noabad taluk on account of this mistake in the description of the taluk. The Collector kept the money in deposit and the

acknowledgment receipt with certain remarks in red ink as required by Rule 102 of the Touzi Manual was sent to the plain. tiff. The plaintiff received this acknowledgment. He did not rectify the mistake with the result that the taluk was sold in January 1934 by the Collector under Act 11 of 1859 on the footing that there was an arrear of revenue due. An appeal to the Commissioner was dismissed. The present suit was raised on 12th November 1934.

2. The question is whether in these Circumstances it can be fairly said against the plaintiff that there was an arrear of revenue on the sunset day, namely 28th June 1933. The latter part of Section 8 of Act 11 of 1859 is in these terms:

Nor shall the plea that money belonging to the defaulter, and Sufficient to pay the arrear of revenue due, was in the Collector's hands, bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute and unless an application in due time made by the defaulter, or after the written agreement provided in B. 15 of this Act, the Collector shall have included, or refused on insufficient grounds to transfer it in payment of the arrears of revenue due.

3. In view of the fact that the description of the taluk was not correctly given, it cannot be reasonably said that the money was undoubtedly placed in the hands of the Collector for crediting the same in respect of the defaulting taluk. The plaintiff did not apply in time to transfer the money in payment of the revenue due, though the acknowledgment of the money order with the remarks in red ink was sent to him and received by him. 16 must therefore be taken that he had got notice to the effect that the remittance had not been credited. Much reliance had been placed by the appellant upon Rules 110 and 215 of the Bengal Touzi Manual. These rules however have no application in the present case, as the money order in this case was an ordinary money order sent from Rangoon. The sale cannot be said to have been held without jurisdiction. The appeal is accordingly dismissed with costs.

Bartley, J.

4. I agree.

