

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Tara Lal Singh v. Sarobur Singh and Others, from the High Court of Judicature at Fort William in Bengal ; delivered 9th December 1899.

Present at the Hearing :

LORD MORRIS.

LORD DAVEY.

LORD ROBERTSON.

SIR RICHARD COUCH.

[*Delivered by Lord Davey.*]

The suit out of which this Appeal arises was one for possession of one third share of certain mouzahs the entirety of which had been sold by auction in certain execution proceedings in the year 1878. A similar suit was commenced by another claimant and the two suits were heard together. The validity and effect of these execution proceedings is the matter in dispute. The following are the material facts.

In and prior to the year 1870 three brothers named Chhatradhari Gadadhur and Sarobur were in joint possession of the mouzahs in question on a jaghir tenure under the late Raja Nilmoni (the predecessor in title of the present Appellant). The Raja obtained three decrees in the Court of the Assistant Commissioner of Purulia (1) No. 136 against Chhatradhari alone for the rent of the mouzahs for the Fasli years 1293–1295 (2) No. 107 against Chatradhari and Gadadhur (misdescribed as Gungadhur) for the rent for the years 1297–1299 and (3) No. 1334 against all three brothers (Sarobur being misdescribed as Surleswar) for

the rent for the years 1280-1282. All these decrees were obtained *ex parte* the Defendants in the several actions not appearing. On the 3rd June 1879 and after execution proceedings Gadadhur obtained an order for restitution of Suit No. 107 to the Judges' list for trial and it was ultimately struck out so far as he was concerned for default of the Plaintiff. The decrees in No. 136 and No. 107 were therefore in effect against Chhatradhari alone and that in No. 1344 against the three brothers (subject to any question as to the misdescription of Sarobur).

The decree-holder applied for execution of these three decrees. The execution proceedings under No. 136 were numbered 225. Those under No. 107 were numbered 224 and those under No. 1334 were numbered 226. The decree-holder appears for some reason to have wished to take out execution against Chhatradhari alone. Some objection appears to have been made (though the Record does not contain the document raising the objection or show by whom it was made) and the following orders were passed by the Deputy Commissioner :—

“ Raja of Pachete - - - Decree-holder,
versus
 “ Chhatradhari Singh and Others - Debtors.”

“ I am of opinion that the objection though in point of abstract justice of no real importance must in point of law be allowed.”

“ (a) In each case when the application has not been made setting forth the names of actual parties the application must be amended.

“ (b) A separate notice of sale for each decree must be made. This notice shall be hung up in (1) Mr. Renny's Court (2) in the Collector's Court (3) in the Subordinate Judge's Court (4) in the Court of the Judicial Commissioner to whom a memo in English will be sent (5) in one of the villages on the land, to wit, Assenhole (6) in the nearest village to the land.

“ (c) The notice shall specify the name of the mouzah and pergunnah in which the under-tenure is situated, the rent payable, viz. :—Rs. 671 per annum, and the entire amount (correctly calculated, and if both are agreeable admitted by

“ signature of both parties) recoverable under the decree under
“ which the under-tenure is to be sold.

“ (d) In each copy of the notice (the copies for Mr. Renny’s
“ Court, and the Collector’s Court will be hung up not later
“ than the 20th June) it shall be said that the sale shall take
“ place on the 15th day of July 1878, at noon, in the Cutchery
“ of the Collector.

“ B. W. MORTON, D.C.

“ The 15th June 1878.”

“ As the decree-holder does not choose to take out execution
“ against all the persons against whom he obtained decrees,
“ and only against Chhatradhari Singh, it does not appear to me
“ that he is bound to take out execution against all. He says
“ Chhatradhari Singh is the only man who has any right.
“ Decree-holder knows his own business best. In the notice
“ the claims of all parties will be given, as the law directs this
“ to be done. If the other men are real tenure holders they
“ may protest. I direct that they be served personally with
“ notice of the proposed sale of the under-tenure.

“ B. W. MORTON, D.C.

“ The 21st June 1878 ”

It appears clearly from the language of these orders that the Deputy Commissioner had the several decrees before him and that his order applied to each decree and it must their Lordships think be assumed that his orders were complied with and the proper notices were given to the several Defendants in Suit No. 1334 as well as in the other suits so as to bind the interests of all these Defendants.

The sale took place on the 15th July 1878 and the decree-holder was declared the highest bidder and purchaser of the villages at the price of Rs. 7,000. It is plain from the Rubokari of the Court of the Collector confirming the sale that it was made in Execution Cases Nos. 224, 225, and 226. It is headed with those numbers. It mentions attachment was made separately of the said lands in the several cases numbered separately; that separate sale proclamations were published and that the three records were put up on the day fixed for the sale. There can therefore be no doubt that the sale was made in Suit 1344 and there can be no doubt that the proper notices were given and proclamations

made to bind all the Defendants in that suit. There is no allegation or proof to the contrary in the present suits.

A sale certificate was issued to the purchaser on 28th October 1878. Before the granting of this certificate the three brothers on the 6th August 1878 filed a memorandum of objection for the purpose of having the sale set aside and their first two grounds of objection are that the sale was made in three separate execution cases in which they were the judgment debtors separately; each of them not being the judgment debtor in each of these decrees. They also made objections to the regularity of the proceedings on the sale and raised certain questions as to the disposal of the purchase money.

The appeal of the judgment debtors was dismissed by the Commissioner and his judgment appears to have been confirmed by the Board of Revenue. Their Lordships do not think that this judgment can be regarded as *res judicata* in the present suits if as the High Court has held there was no sale of anything but Chhatradhari's interest but the proceedings are important as showing that the three brothers understood that the sale was in all three decrees and that they were all judgment debtors and the property had been sold in execution of at least one judgment against them all. They also show that Sarobur recognised himself as the person sued notwithstanding the mistake in his name on the record of 1344.

The present suit was commenced on the 2nd June 1890 and in his plaint the Plaintiff alleged that the property was sold under decree No. 107 and the execution case 224 (without mentioning the other decrees and execution cases) and that inasmuch as that decree had been set aside the sale on execution of it was void as against him. Their Lordships have already intimated the

grounds upon which this contention cannot be maintained. The High Court have however held that having deliberately elected to execute the decrees against Chhatradhari alone and having after the sale chosen to have the sale treated as made in Execution 224 the decree-holder cannot be allowed to treat the proceedings differently and support it as a sale of the interests of all three brothers. Their Lordships cannot accede to this reasoning. The learned Judges do not seem to have thought that if the sale took place and is to be treated as having taken place in Execution No. 226 the sale would not be valid but they seem to have thought that the decree-holder and the present Appellant are in some way estopped from treating the sale as made under Execution No. 226. It is not however a question of estoppel but of fact and on this point their Lordships need not repeat what they have said. There can be no estoppel when the truth of the matter appears as it does in the present case on the face of the proceedings. And it is plain from their memorandum of objections that Gadadhur and Sarobur were not deceived as to the facts or prevented by any misstatement of the Raja from asserting any rights they may have conceived themselves to possess. On the whole their Lordships cannot find on this Record that either in form or substance any injustice was done to Gadadhur or Sarobur and they hold that the sale passed the entirety of the property.

They will therefore humbly advise Her Majesty that the order appealed from be reversed and the appeal to the High Court be dismissed the parties bearing their own costs as in the First Court. As this is a pauper case there will be no costs of the Appeal.
