Privy Council Appeals Nos. 73 & 74 *of* 1936

Bengal Appeals Nos. 12, 21 & 22 *of* 1933

Anath Nath Biswas minor by Srimati Binapani Dassi - *Appellants*

v.

Rai Bahadur Dwarka Nath Chakravarti and others - *Respondents*

Lunkaran Soni since deceased (now represented by Shiva Chand Soni) and another - - - - *Appellants*

v.

Rai Bahadur Dwarka Nath Chakravarti and others - *Respondents*

Chunni Lal Hemraj (a firm) - - - - *Appellants*

v.

Rai Bahadur Dwarka Nath Chakravarti and others - *Respondents*

(*Consolidated Appeals*)

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 16TH FEBRUARY, 1939

Present at the Hearing :

LORD ROMER

LORD PORTER

SIR GEORGE RANKIN

[*Delivered by* SIR GEORGE RANKIN]

In the books of the Collectorate of the 24 Parganas touzi No. 151 was an estate bearing a land revenue of Rs.39,786 and divided into two blocks. The larger block or Burra Hudda consisted of 104 villages scattered throughout the district and to it was allocated over Rs.37,000 of the annual revenue. The smaller block or Chota Hudda consisted of seven villages: about Rs.2,000 of the revenue was allocated to it, and its lands lay on the outskirts of Calcutta. In each block the zemindary right was vested in a number of persons and in each a number of separate accounts had been opened under the Bengal Land Revenue Sales Act (XI of 1859). The three sets of plaintiffs-appellants now before the Board were all interested in Burra Hudda. Rai Dwarka Nath Chakravarti Bahadur (the first respondent) was interested in both and had a separate account or accounts in each. In Burra Hudda he had an

interest in some 30 villages: in Chota Hudda he had a one-half interest in respect of which he had been allotted in severalty by a final decree for partition about 100 bighas.

By the end of 1927 the owners of two separate accounts in Burra Hudda—numbered 7 and 8—had defaulted in payment of their share of the revenue and their separate interest had been put up for sale without result. On 5th and 6th January, 1928, the Collector directed that the whole estate be put up for sale on 23rd February, 1928. On that date the entire estate was sold by auction to one Suresh Sanyal for Rs.85,000. In the events which have since happened the persons entitled in right of this purchase are (1) respondent No. 3A, Bahadur Singh Singhee, the only contesting defendant, in respect of Burra Hudda, (2) the first respondent in respect of Chota Hudda which he purchased from Singhee for Rs.12,000, (3) certain persons formerly interested in Chota Hudda who have been allowed by the first respondent to buy back from him their former interest.

The three suits which have given rise to the present consolidated appeal were filed in 1928 and 1929. By their plaints the appellants challenged the revenue sale of 23rd February, 1928, as wholly void for want of jurisdiction and bad for irregularities, but the learned Subordinate Judge found against these contentions. They also alleged, however, that in respect to the revenue sale the first respondent in concert with his son Gopal, and with Suresh Sanyal (the nominal bidder) had been guilty of fraud or improper conduct to the prejudice of his co-owners in the estate, and contended that, by reason thereof, the purchase was one in which they could claim to share by recovering their former interest in Burra Hudda upon payment of a proper proportion of the purchase money. In each case the learned trial Judge accepted this contention and gave the plaintiffs a decree (5th January, 1931), directing Bahadur Singh Singhee to convey to them their former share on receipt of a proportionate part of Rs.85,000. Relief was granted in this form as being in accordance with the decision of this Board in *Deonandan Prashad* v. *Janki Singh*, (1916) L.R.44, I.A. 30, where a co-owner's mortgagee by making default in the payment of revenue had intentionally brought about a revenue sale in order to purchase himself.

The learned Judges of the High Court (C. C. Ghose and S. K. Ghose JJ.) on appeal dismissed the three suits with costs (11th April, 1933), holding that no fraud or improper conduct towards his co-owners in respect of the revenue sale had been proved against the first respondent, and that it was no longer open to the plaintiffs, who had carried in no cross-objections to the decree of the trial Court, to maintain that the revenue sale should be set aside for want of jurisdiction or irregularity.

Suresh Sanyal was the manager employed by a widow lady Srimati Sailasuta Debi who was guardian of her two minor sons. She had been minded for some time before 1928 to buy touzi No. 151 on behalf of her sons if it was

brought to sale and was prepared to bid up to four lacs of rupees for it. Suresh Sanyal had been given a lac of rupees to enable him to make the usual 25 per centum deposit. As the price fetched was Rs.85,000 only he paid the whole of the purchase money at the time of the sale on 23rd February, 1928. But he had made an arrangement with Gopal Chakravarti, the first respondent's son, that the whole interest in Chota Hudda and a one-third interest in Burra Hudda should be purchased for Gopal (really for his father, the first respondent) who was to pay therefor a sum bearing the same proportion to the total purchase price as the land revenue thereon bore to the total revenue assessed on the estate. He took from Gopal a promissory note dated 23rd February, 1928, for Rs.36,000 which had been drawn up prior to the sale in terms which contemplated that this amount might be required to meet Gopal's share of the deposit. It bore a note made later on the same date showing that Rs.31,180 was sufficient to meet Gopal's share of the whole purchase price. It is not now necessary to determine the exact date at which this arrangement was come to nor to ascertain how much Sm. Sailasuta was told about it and when. On any view Suresh Sanyal in making it was acting improperly as manager for the estate of infants; and in the opinion of the High Court neither he nor the first respondent nor Gopal can be acquitted of dishonest conduct towards Sm. Sailasuta, though by some date in March she was consulted about a conveyance to the first respondent. By a deed of sale dated 25th February, 1928 (which may or may not have been ante-dated), Suresh Sanyal purported to convey to Gopal the whole interest in Chota Hudda for Rs.4,269, the proper proportion of Rs.85,000 according to the land revenue assessment, this sum being treated as paid out of the promissory note for Rs. 36,000 above-mentioned. By another deed dated 12th March, 1928, Gopal purported to convey to his father, the first respondent, a one-half interest in Chota Hudda for Rs.2,134-8-0, i.e., half of the sum which he had paid to Suresh Sanyal. The Commissioner, upon application made to him, was willing to set aside the sale if the revenue in arrear was paid up, but by July of 1928 this had amounted to about Rs.1,10,000, and as none of the co-sharers managed to raise the money the sale was confirmed on 17th August, 1928. Gopal in July and August, 1928, had conveyed to certain of the co-sharers in Chota Hudda part or whole of the interests they had formerly had therein at prices which appear from the deeds of sale. Sm. Sailasuta Debi in September, 1928, took steps to prosecute Suresh Sanyal and the Chakravartis for their conduct in connection with the revenue sale, and on 25th September, 1928, a suit against them was brought by her minor sons asking for a declaration that the minors were the real purchasers of touzi No. 151 at the revenue sale and were entitled to the sale certificate, to mutation of their names in the revenue records, and to possession. Sm. Sailasuta obtained possession from the Collector, but having become involved in much litigation over the matter, she

applied on 16th August, 1929, to the District Judge under the Guardians and Ward Act (VIII of 1890) for leave to sell the minors' rights to Bahadur Singh Singhee (the contesting respondent upon this appeal) for the sum of Rs.2,31,000 without any covenant for title and subject to all risks and litigation. Leave was given, the money paid into Court and the purchase completed. Thereupon Bahadur Singh Singhee was substituted for the minors as plaintiff in the suit which they had brought against Suresh Sanyal and the Chakravartis and on 28th August, 1929, this suit was settled by a compromise under which Gopal gave up all claims and was relieved of all liability under the promissory note for Rs.36,000; title to touzi No. 151 was agreed to have vested in Bahadur Singh Singhee by virtue of his purchase from the minors' estate; but it was arranged that he should convey to the first respondent for Rs.12,000 the zemindary interest in Chota Hudda. Thereafter the first respondent conveyed to certain of his former co-sharers in Chota Hudda their former interest or part thereof for agreed consideration.

The main question which has arisen upon these transactions is whether the appellants whose former interest was in Burra Hudda can claim against the contesting respondent Bahadur Singh Singhee, whose interest is now solely in Burra Hudda, that he is under an obligation to reconvey their former interest to them against payment of a proportionate part of the sum of Rs.85,000, the purchase price for the whole estate at the revenue sale of 23rd February, 1928.

Upon this question it is not now contended by the appellants that the revenue sale was brought about by the first respondent or that default of payment by him has any bearing on the case. Nor is it now maintained that his action in connection with an application made by him to have the two Huddas separated into two independent estates was in any way improper. It is not now necessary to examine the difficulties which had beset him in his project for developing a building estate—called the Regent Park estate—on certain lands within Chota Hudda and adjacent thereto. The position of the first respondent *vis-à-vis* the company which had been promoted for that purpose neither emphasises nor obscures what is sufficiently plain—that it was very much to his interest that his rights in Chota Hudda should not be extinguished by a revenue sale, but that if the rest of the estate was vested in a few substantial persons his interests would be in less jeopardy from default by his co-owners. If a revenue sale came to be held, the first respondent was fully entitled to make arrangements whereby the property should be purchased partly or wholly on his behalf: to such a purchase his co-owners were not entitled to object nor was it necessary that he should inform them in advance of his intentions. The plaintiffs' case now rests upon allegations that the first respondent himself, or by his son Gopal, acted so as wrongfully to interfere with the auction sale of 23rd February, 1928, and this case lies within a narrow compass.

On the 22nd February, 1928, suit No. 36 of 1928 was instituted before the First Subordinate Judge, 24 Parganas by three of the present respondents, then interested in Chota Hudda, seeking *inter alia* a declaration that the sale advertised for noon on the following day was illegal and irregular and asking that the Collector be restrained from proceeding with it. The learned Judge, who was quite probably familiar with last-minute applications for the stay of sales, was applied to on the morning of the 22nd February for an interlocutory injunction. The matter could not that day be gone into, but it was fixed for the following morning. Meanwhile the learned Judge was unwilling to go so far as to request the Collector to postpone the sale, but was willing that the parties should be given a copy of his order adjourning the case so that they could produce it before the Collector, who would then decide upon his course of action. Indeed by his order he "directed" that a copy be shown to the Collector. It appears that the first respondent's son Gopal obtained a copy of this order of adjournment and at 10 a.m. on the next morning, in company with a European solicitor, Mr. Morgan (who acted for the Regent Park Syndicate, Ltd.), waited upon the Collector at his house and attempted in vain to obtain from him a promise to postpone the sale. Later in the morning—probably at or about the time when the sale proceedings were about to begin—Gopal verbally renewed his request to the Collector, basing it on the fact that the Civil Court was to hear the injunction matter on that morning. The Collector by his order said: "The same gentleman came to see me at my house at 10 a.m. this morning and made other objections against this sale. Had he then asked for the sale to be adjourned to a later hour this afternoon I would have allowed this, but as it is I cannot grant the time and the sale must proceed at the hour fixed." In the present case the trial Judge has held upon this evidence that Gopal wilfully suppressed the order until just before the sale, and in this was guilty of a trick in order to ensure that the sale should be held, that his father's co-owners should be taken by surprise and should not compete as bidders. The learned Judges of the High Court have reversed this finding, holding that the first respondent and his son Gopal did what was possible to be done in the circumstances to induce the Collector to stay the sale. Their Lordships are in agreement with the High Court: they are of opinion that this particular allegation of fraud or trickery rests upon an unproved and ill-grounded suspicion. It is very far from clear that the first respondent or his son desired that a sale should take place. In order to regain the former interest of the first respondent it was in the event of a sale necessary to buy it back under the arrangement with Suresh Sanyal, and the terms of the promissory note of 23rd February, 1928, show that it might, so far as they could see, have cost them over a lac of rupees at a time when their money was exhausted. Moreover the title obtained from Suresh Sanyal cannot have appeared to them as strong or

likely to go unchallenged. Their arrangement with him was an expedient to avoid some part of the disaster of a sale, rather than a transaction which they deliberately preferred as bettering their position. The correspondence shows, and it is not denied, that up to 18th February, 1928, the first respondent desired to prevent a sale from being held and there is nothing, in their Lordships' view, in the evidence as to his arrangement with Suresh Sanyal which proves that he had changed his mind on this point by the 22nd.

It is alleged that the first respondent and his son dissuaded possible bidders from attending the sale by deceiving them into a belief that the sale would not be held on the day appointed. The trial Judge has found these allegations proved, holding that both Gopal and his father deliberately misled co-sharers who could have bid at the sale and by thus driving them away purchased a very valuable property at a grossly inadequate price. The High Court have reversed this finding also:—

> "We shall go into the question as to whether Dwarkanath Chakravarty secured the services of a friendly purchaser, but for the moment we are of opinion on the materials on the record that Dwarkanath Chakravarty had not been guilty of any acts of bad faith towards his co-sharers, that he had not lulled his co-sharers into a sense of security, that he had not abused their confidence and that he did everything that was humanly possible for him to do to prevent the sale. We are further of opinion that all the co-sharers knew at all material times that the sale could not be prevented inasmuch as the arrears of revenue had not been paid. Further we are of opinion that Dwarkanath Chakravarty did not do anything to prevent his co-sharers from becoming possible bidders. The story of dissuading bidders rests on the evidence of Ram Chandra Banerjee, Panchcowrie, Apurba Mitter, Phani Banerjee. We have examined this evidence minutely and we are of opinion that in point of fact Dwarkanath Chakravarty did not dissuade possible bidders at the sale for arrears of Government revenue. It is noteworthy that of the persons alleged to have been dissuaded at the time of the sale no one has been examined and as regards the persons alleged to have been dissuaded before the sale the only witnesses on that point are Hazari, Panchcowri, and and Raghumani. We have examined the evidence of these witnesses in the light of the arguments submitted by the plaintiffs-respondents, but we are unable to place any reliance on their evidence. The allegations made up to this point against Gopal Chandra Chakravarti have not been substantiated, nor is there any evidence whatsoever which we can accept that Dwarkanath Chakravarty had given assurances to the co-sharers that under no circumstances would the sale come on and that in any event he would take all effective steps to protect the interests of the co-sharers."

Their Lordships, having examined the evidence upon this head are prepared to accept the view of it taken by the High Court. They think that as proof of fraud or bad faith towards the other co-sharers it is of very doubtful quality. In particular, there is no acceptable evidence that any of the co-sharers were minded at the time to bid or that they were so unreasonable as to treat the first respondent or his son as persons in a position to give reliable assurances as to what the Collector would do in the matter of the sale. Their Lordships do not regard it as proved that any such assurances were in fact given. That this part

of the plaintiffs-appellants' case was accepted by the trial Judge is a circumstance of weight, but on more than one point the learned Judge's suspicions of the first respondent and his son have led him into findings of fact which cannot be supported and are not now maintained on this appeal. He has found, for example, that the first respondent was defaulting intentionally in making payments of revenue in order to bring about a sale, a finding which may well have coloured his opinion on the other points. Their Lordships are not able in these circumstances to regard as conclusive his opinion upon this part of the evidence, and they think that the learned Judges of the High Court were right in forming an independent opinion. Indeed the evidence of Raghumani is almost the only evidence which even at its face value amounts to evidence of an untrue statement of fact: but his story that Gopal in the afternoon of the 22nd February told him that the Subordinate Judge had granted an injunction is an improbable story which cannot be accepted. It is not shown to their Lordships' satisfaction that it was or was thought to be in the interest of the first respondent that any co-sharer, if willing to pay up the arrears of revenue and so to stop the sale, should be discouraged from so doing. This would seem to have been a more probable course of action on their part than to bid as purchasers, since it would have required less than half a lac.

In these circumstances their Lordships do not find it necessary to consider what would in law have been the consequences, had such conduct as is alleged against the first respondent and his son been brought home to them; but they cannot omit to note that as against Bahadur Singh Singhee it is conceded that the relief granted against him by the trial Court could not be justified without proof that Suresh Sanyal had notice of the wrongful acts complained of. The learned Judges of the High Court appear to have thought that it was necessary for the appellants to prove that Sm. Sailasuta Debi herself had knowledge of such acts at the time of the purchase, but the knowledge of Suresh Sanyal as her agent would in law be notice to her. The appellants, however, can point to nothing in the evidence which would warrant a finding that Suresh Sanyal had any knowledge of the statements which the appellants complain of as having driven bidders away. This want of evidence cannot be supplied by describing the arrangement made by him with Gopal at the time of the sale as a conspiracy or by regarding the witness Ram Chandra Banerjee as a "dummy bidder."

No view that can be taken on these matters discloses any clear or compelling motive on the part of the first respondent or his son to inform Suresh Sanyal of any mis-statements made by them to the other co-owners of the estate, or other solid ground for thinking that any such information was imparted to him before the sale. However wrongfully these persons may have acted towards Sm. Sailasuta Debi or the minors, no mis-statements made to

co-sharers could without proof be held to have been brought to Suresh Sanyal's notice, and the appellants' claim to a reconveyance of their formers interests in Burra Hudda must fail on this ground also.

Their Lordships will not here discuss whether the case of *Deonandan Prashad* v. *Janki Singh,* (1916) L.R.44, I.A.30, or section 90 of the Indian Trusts Act (II of 1882) would have grounded a claim to the relief which was granted by the trial Court on the assumption that Suresh Sanyal and through him Sm. Sailasuta Debi and the contesting respondent had notice of the acts complained of.

It remains only to consider whether the High Court were right in ruling that the appellants should not be heard to maintain that the trial Judge was wrong in refusing to set aside the revenue sale on the grounds of want of jurisdiction or irregularity as no cross-objections under O. XLI, rule 22 of the Code had been filed. This is a claim to relief founded upon different grounds from those upon which the trial Court's decree proceeded, and upon principles different from those which underlie the relief given by the decree. In their Lordships' view the case came clearly within the condition imposed by the concluding words of sub-rule (1) of rule 22, "provided he has filed such objections in the Appellate Court, etc., etc." It was contended, however, that the language of rule 33 of the same Order was wide enough to cover the case. Even if their Lordships assume that the High Court was not wholly without power to entertain this ground of appeal—an assumption to which they do not commit themselves—they are clearly of opinion that rule 33 could not rightly be used in the present case so as to abrogate the important condition which prevents an independent appeal from being in effect brought without any notice of the grounds of appeal being given to the parties who succeeded in the Court below. The Secretary of State in Council may not have been a necessary party to the proceedings as regards the claim to have the revenue sale set aside (*Balkishen Das* v. *Simpson,* (1898) L.R. 25, I.A. 151, 160), but the argument in favour of the competency of the appeal upon this point is not improved by the fact that one of the three suits was dismissed in the trial Court as against the Secretary of State in Council who did not appear at the hearing before the High Court.

Their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

15435—3A) Wt. 8168—30 200 3/39 P St. G. 338

In the Privy Council.

ANATH NATH BISWAS MINOR BY SRIMATI BINAPANI DASSI

v.

RAI BAHADUR DWARKA NATH CHAKRAVARTI AND OTHERS

LUNKARAN SONI SINCE DECEASED (NOW REPRESENTED BY SHIVA CHAND SONI) AND ANOTHER

v.

RAI BAHADUR DWARKA NATH CHAKRAVARTI AND OTHERS

CHUNNI LAL HEMRAJ (A FIRM)

v.

RAI BAHADUR DWARKA NATH CHAKRAVARTI AND OTHERS

(*Consolidated Appeals*)

DELIVERED BY SIR GEORGE RANKIN

Printed by HIS MAJESTY'S STATIONERY OFFICE PRESS,
POCOCK STREET, S.E.1.

1939