

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Ram Golam Sahu and another v. Barsati
Singh and others, from the High Court of
Judicature at Fort William in Bengal;
delivered the 15th December 1908.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD ATKINSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[Delivered by Lord Macnaghten.]

This Appeal was heard *ex parte*. It certainly presents something like a puzzle owing to complications which have resulted from an error committed by the Appellants at one stage of the proceedings. On the whole, however, their Lordships are of opinion that the Appeal ought to succeed.

On the 20th of December 1900 the Appellants obtained from the Subordinate Judge of Mozufferpur an ordinary decree for a sale of some mortgaged property. The amount for which the decree was passed was Rs. 114,000. The Appellants' claim was for a considerably larger amount. They appealed to the High Court for a modification of the decree on the ground that the amount allowed was inadequate.

In August 1901, before the Appeal to the High Court came on for hearing, the Appellants applied to the Subordinate Judge for an order absolute for sale. The Subordinate Judge refused the application pending the Appeal. But the High Court, on the petition of the Appellants, directed the Subordinate Judge to make the necessary order. In their Judgment the learned Judges of the High Court say—

“ It is suggested that in the Appeal to this Court
“ there may be an order or a decree for a further
“ sum in favour of the petitioners and some confusion
“ may result. But we have not to consider that
“ matter at present, nor is it clear that any confusion
“ will arise.”

On the 14th of April 1902 the order absolute was made. The property was put up for sale on the 18th of August 1903. It was purchased by the Appellants. The sale was confirmed on the 4th of January 1904. But the Subordinate Judge, on the objection of the Respondents, refused to put the Appellants in possession.

On the 27th of January 1904 the Appeal of the present Appellants from the original Decree of the 20th of December 1900 came on to be heard. The Court made an Order modifying the Decree in the Appellants' favour, directing the Respondents to pay the whole amount adjudged within six months, and, in case of default, directing the property to be sold.

The next important date is the 18th of April 1904, when an Appeal from the refusal of the Subordinate Judge to put the Appellants in possession of the property was heard. The High Court, after hearing both parties, decided that the Appellants were entitled to possession. They were accordingly put into possession and have remained in possession ever since.

As the Respondents were represented by Counsel or pleaders on that occasion, it cannot be doubted that the attention of the High Court was called to the fact that the six months allowed by the Decree of the 27th of January 1904 had not expired, and that the sale had taken place under a Decree of the Subordinate Judge inconsistent with the subsequent Decree of the High Court.

The objection was apparent. It could not have been overlooked. How the High Court dealt with it does not appear. It may not have been pressed by the Respondents, or the High Court may have been satisfied that, under the circumstances of the case, the form of the Decree was a mere slip on the part of the Appellants, or the Registrar of the Court, which misled nobody.

The next step was that the Respondents, on the 19th of May 1904, applied to the Subordinate Judge claiming restoration to possession by setting aside the sale of the 18th of August 1903. The Subordinate Judge dismissed the application with costs. On appeal, however, to the High Court that Court reversed the Decree of the Subordinate Judge, set aside the sale, and directed that possession of the property should be restored to the Respondents.

From that Decree the Appellants have appealed to His Majesty in Council. Pending the Appeal the High Court has refused to disturb the possession of the Appellants, observing that "the case is in its circumstances very peculiar."

The Appellants take their stand on the Order of the High Court of the 18th of April 1904. Their Lordships think that the Appellants are right and that the Order now under appeal is inconsistent with the Order of the 18th of April

1904, against which no appeal was brought, and which, in their Lordships' opinion, ought not now to be treated as null and void.

The merits of the case are not with the Respondents. If they were allowed to take advantage of the error in the Decree of the 27th of January 1904, it would only lead to expense and delay. They have not offered to redeem, and probably are not in a position to redeem, the property.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be allowed and that the Order of the 2nd of June 1905 ought to be discharged, but without costs, and the Decree of the Subordinate Judge of the 16th of July 1904 restored, and that any costs paid under the order of the 2nd of June 1905 ought to be repaid. Their Lordships do not think it is a case for giving the Appellants any costs of the Appeal.
