his tenants. In the words of their Lordships there was no admission of jural relationship of mortgagee and mortgagors nor was there any intention to make that admission. No other document has been pleaded by way of acknowledgment. The period of sixty years admittedly expired before 1947 and the evacuees had no interest left in the land. After the expiry of sixty years, the plaintiffs or their predecessors-in-interest had become full owners of the land. It was thus not a composite property and the authorities under the Separation Act had jurisdiction in the matter. In our opinion, no infirmity can be found with the judgment and decree passed by the learned Chief Justice in R.S.A. 1894 of 1959.

(9) For the reasons given above, there is no merit in this appeal which is dismissed but the parties are left to bear their own costs.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

MOHINDER SINGH,—*Appellant.*

versus

THE ESTATE OFFICER, ETC.,—*Respondents.*

Letters Patent Appeal No. 153 *of* 1972.

July 18, 1972.

Punjab Land Revenue Act (*XVII of* 1887)—*Sections* 72, 75 *and* 91—*Provisions dealing with collection of land revenue as contained in sections* 72 *and* 75—*Whether* mandatory—*Property attached for realisation of such dues—Whether can be sold for amount falling due during the period of attachment.*

Held, that the provisions contained in Chapter VI of the Punjab Land Revenue Act, 1887, dealing with collection of land revenue, under which land revenue and other sums due to the Government and recoverable as arrears of land revenue are recovered are mandatory and that the procedure prescribed therein should be strictly followed with regard to the issuing of the recovery certificate, attachment of the property and sale thereof. Clause (b) of the proviso to section 75, which lays down a definite prohibition against the sale of the attached property for the realisation of the amount falling due during the period of attachment, is mandatory in character

and its disregard has the effect of making the sale without jurisdiction and, therefore, null and void. Hence the property attached for the recovery of an amount realisable as land revenue cannot be sold for the amount falling due during the period of attachment. For the realisation of such amount, an order for the recovery of the same has to be passed, recovery certificate issued and the property attached afresh.

(Para 5)

Letters Patent Appeal under Clause X of the Letters Patent, against the judgment of Hon'ble Mr. Justice S. S. Sandhawalia, passed in Civil Writ No. 4833 *of* 1971, *dated 9th February,* 1972 (*Mohinder Singh* v. *Estate Officer, etc.*).

M. J. Singh Sethi, and Inderjit Malhotra, Advocates, *for the appellant.*

C. J. Singh Bindra, Advocate, for Nos. 1 to 4.

G. R. Majithia, Advocate, for No. 5.

JUDGMENT

Judgment of the Court was delivered by:—

TULI, J.—This appeal under clause 10 of the Letters Patent has been directed against the judgment of a learned Single Judge dismissing the writ petition of the appellant.

(2) The facts about which there seems to be no dispute are that the appellant obtained a loan of Rs. 14,000.00 under the "House Building Loan Scheme for the year 1958-59" from the Punjab Government for the purpose of constructing a pucca residential house on the site measuring 1784.7 sq. ft. bearing No. 46, Street E, Sector 23-D, Chandigarh, on June 14, 1958, and executed a security bond for the same. The amount was repayable in thirty half-yearly equated instalments of principal and interest, the first instalment falling due on the date of the expiry of six months from the date on which the loan amount was placed in the joint current account of the loanee and the Estate Officer with the State Bank of India, Chandigarh. According to the statement of account placed on record on behalf of the Chandigarh Administration, the first instalment became due on January 3, 1959. Each instalment was to be of Rs. 668.92. The appellant did not pay the instalments on the due dates. On April 23, 1963, a notice was issued to the appellant by

the Assistant Collector II Grade, Chandigarh Administration, reading as under :—

> "Please note that a sum of Rs. 8,364.68 is outstanding against you. You are, therefore, directed to appear before me on or before 30th April, 1968 and deposit the outstanding amount in this office, failing which proceedings under the Punjab Land Revenue Act, 1887, will be taken against you and no objection will be entertained thereafter and the recovery shall be effected through warrant of arrest/ warrant of attachment."

On May 2, 1968, an order for the recovery of the said amount as arrears of land revenue was passed and the recovery certificate was issued. In pursuance of that certificate, orders for the attachment of the house of the appellant were passed on August 22, 1968, and the house was actually attached on September 17, 1968. On September 7, 1968, the appellant paid the sum of Rs. 4,082.00 and another sum of Rs. 1,000.00 was paid on March 11, 1969. These amounts were duly credited into the account of the appellant. From September 17, 1968, onwards the rent of the house was also being realised by the Collector, Chandigarh. In the statement of account it is shown that Rs. 180.00 were realised on November 14, 1968, Rs. 180.00 on December 11, 1968, and Rs. 150.00 on January 15, 1969. The appellant has asserted that the monthly rent of the house from all the tenants was Rs. 255.00 where as the case of the respondents is that the monthly rent was Rs. 178.00 on March 26, 1969, the Assistant Collector demanded a sum of Rs. 3,562.68 from the appellant which amount was not paid. On August 23, 1969, the Collector, Chandigarh, asked for the sanction of the Commissioner to sell the house for Rs. 13,926.20 which amount was alleged to be due from the appellant as on April 15, 1969. The sanction was accorded on December 5, 1969. The house was put to auction on May 15, 1970, at which the highest bid for Rs. 22,000.00 was given by respondent 5 (Shrimati Pushpa Devi). That bid was below the reserve price and was not accepted. On June 12, 1970, a proclamation for sale was issued in which the amount shown as due from the appellant was Rs. 13,926.20 and the auction was fixed for July 24, 1970. Auction was held on that date and the highest bid of Rs. 30,000.00 was given by respondent 5. The appellant made an application for setting aside the auction sale under section 91 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as the Act), to the Commissioner

which was dismissed on November 24, 1971. While the proceedings were pending before the Commissioner on the application of the appellant, the appellant tendered four bank drafts of the value of Rs. 5,000.00 in all during the month of May, 1971. These drafts were returned to him with letter dated June 4, 1971, with the remark that the case was pending before the Commissioner for confirmation of the stle of the house and, therefore, the amount could not be accepted. The appellant filed a writ petition in this Court challenging the auction of his house and the order of the Commissioner dismissing his objections under section 91 of the Act. That petition, as stated above, was dismissed by a learned Single Judge on February 9, 1972.

(3) It is quite evident from the reading of the judgment of the learned Single Judge that the case was not properly argued before him with the result that a proper decision could not be rendered.

(4) From the facts stated above, it is abundantly clear that the attachment of the house was made for the recovery of Rs. 8,364.68 for which recovery certificate had been issued. Under clause (b) of the proviso to section 75 of the Act, the house could not be sold for the recovery of the arrears of instalments which fell due after the date of attachment. The purport of this clause is that the attached property cannot be sold for the recovery of any arrear which has accrued while the property was under attachment under section 72 of the Act. This provision prohibits the sale for the recovery of any arrear falling due during the period of attachment and is, therefore, mandatory. Their Lordships of the Supreme Court in *Haridwar Singh* v. *Bagun Sambrui and others* (1), observed as under :—

> "Several tests have been propounded in decided cases for determining the question whether a provision in a statute, or a rule is mandatory or directory. No universal rule can be laid down on this matter. In each case one must look to the subject matter and consider the importance of the provision disregarded and the relation of that provision to the general object intended to be secured. Prohibitive or negative words can be rarely be directory and are indicative of the intent that the provision is to be mandatory."

(1) A.I.R. 1972 S.C. 1242.

The intention of the various provisions contained in Chapter VI of the Act dealing with collection of land revenue, under which land revenue and other sums due to the Government and recoverable as arrears of land revenue, as mentioned in section 98 of the Act, are recovered, is that the procedure prescribed therein should be strictly followed with regard to the issuing of the recovery certificate, attachment of the property and sale thereof. We are, therefore; of the opinion that clause (b) of the proviso to section 75, which lays down a definite prohibition against the sale of the attached property for the realisation of the amount falling due during the period of attachment, is mandatory in character and its disregard has the effect of making the sale without jurisdiction and, therefore, null and void.

(5) It is the admitted case of the parties that before obtaining the sanction of the Commissioner for the sale of the house for the recovery of Rs. 13,926.20 the Collector, Chandigarh, never issued any notice to the appellant intimating that that amount was due from him and calling upon him to pay the same. Apart from obtaining the sanction of the Commissioner, no order for the recovery of that amount was passed. The house was not attached before being put to auction for the recovery of Rs. 13,926.20. Admittedly, a part of that amount had become due during the period in which the house was under attachment. I have pointed out above that on March 26, 1969, a sum of Rs. 3,562.68 was only demanded from the appellant and even that amount must have been realised from the rents of the property till the date of the sale. It is mentioned in para 6 of the return filed by Shri J. D. Gupta, Collector-cum-Estate Officer, Chandigarh, that a sum of Rs. 3,916.00 had been recovered as rent for the period from October 1, 1968, to July 31, 1970. No part of the amount of Rs. 8,364.68, for which the attachment of the house was made, was thus due on the date of the sale of the house. The house also was not liable to sale if the amount for which it was attached could be realised from its income during the course of five years as is provided in section 72 of the Act. Even when the house was attached on September 17, 1968, the amount of Rs. 8,364.68 had been reduced to Rs. 4,282.68 because of the payment of Rs. 4,082.68 on September 7, 1968. This amount of Rs. 4,282.68 could be easily recovered from the rent of the house during the period of five years even if the rent was Rs. 178.00 per mensem as alleged by the respondents. On account of the provisions of sections 72 and 75 of the Act, the Collector, in the circumstances narrated above, had no

right or authority to put the house to sale for which sanction was obtained from the Commissioner. The sale of the house was; therefore without jurisdiction and hence null and void. Under section 91 of the Act; the auction could be set aside if it had been validly held but there was a material irregularity in the publication or the conduct of the sale and a substantial loss had occurred to the appellant. The learned Commissioner found that the sale had been properly proclaimed; published and held and no substantial loss had been caused to the appellant but he did not advert to the authority of the Collector to sell the house for the realisation of the amount for which it had been sold. Evidently, the Collector and the Commissioner were under the belief that the amount due was Rs. 13,926.20 and for the recovery of that amount the house was put to auction. They forgot that before selling the house for the recovery of that amount an order for the recovery of the same had to be passed, recovery certificate issued and the house attached afresh. On the basis of the attachment made on September 17, 1968, in pursuance of the recovery certificate for Rs. 8,364.68, the house could not be sold for the recovery of Rs. 13,926.20 which included an amount which had fallen due during the period of attachment. Consequently, we hold that the house by the order of the Collector on July 24, 1970; was without jurisdiction and; therefore; null and void.

(6) For the reasons given above, we are of the opinion that the sale has to be set aside and accepting this appeal we set aside the same. The order of the Commissioner, dated November 24, 1971, confirming the said sale is also quashed. The respondents will be at liberty to proceed in accordance with law for the recovery of the amount due from the appellant after furnishing him with the statement of account showing the realisation of the rent from September 17, 1968, onward. Needless to say that the amount realised on account of the rent of the house by the respondents is liable to be adjusted against the amount due from the appellant. The amount of rent realised by respondent 5, after she took possession of the house in pursuance of the sale in her favour; has also to be credited to the account of the appellant and can be deducted from the amount which has to be refunded to her by the Estate Officer because of the cancellation of the sale in her favour. In the circumstances of the case, we make no order as to costs as the appellant cannot be said to be free from blame in this case.

N. K. S.