APPELLATE CIVIL.

Before Mookerjee and Rankin JJ.

1923

April 10.

CHOWDHURY MAHAMMED AMIN

v.

BIJOY CHAND MAHATAB.*

Patni Taluk—Sale for arrears of rent—Suit by purchaser for refund of money on the sale being set aside—Maintainability.—Regulation VIII *of 1819, s. 14.*

Where a patni sale was set aside under section 14 of the Patni Regulations and a suit was brought by the auction-purchaser against the zamindar to recover the money paid by him on account of his purchase :

Held, that the purchaser could not maintain a separate suit to obtain the relief which if he had so desired might have been granted to him against the zamindar in the suit for the reversal of the sale.

APPEAL by Chowdhury Mahammed Amin, the plaintiff.

This appeal arose out of a suit brought by the plaintiff against the defendant zamindar, to recover the money paid and the security furnished by him as the purchaser of a patni taluk, the sale of which was subsequently set aside under section 14 of the Patni Regulations (VIII of 1819), the defendant zamindar agreed to return the security but refused to refund the purchase-money or make any payment on account of rent paid or costs incurred by the plaintiff. The primary Court dismissed the suit holding that there was no cause of action for the security and that the claim for purchase-money, rent or costs was not maintainable, having regard to the provisions of section 14 of the Patni Regulations (VIII of 1819), the plaintiff appealed to the High Court.

* Appeal from Original Decree, No. 112 of 1921, against the decree of Atul Chandra Banerjee, Subordinate Judge of Burdwan, dated March 5, 1921.

Babu Mahendra Nath Roy, *Maulvi Nuruddin Ahmed* and *Maulvi A. S. M. Akram*, for the appellant. The plaintiff is entitled to a refund of his money, the sale being set aside. In the suit under section 14 of the Patni Regulations, the question of compensation to the auction-purchaser was not gone into, the sale was set aside on the ground of non-service of notice, the principle of *res judicata* does not apply and section 14 of the Patni Regulations is no bar to the institution of the present suit, it is not the sole remedy: *Sheo Sagar Singh* v. *Sita Ram Singh* (1), *Nagendra Nath Pal Chowdhury* v. *Chandra Shekhar* (2), *Radha Madhab Samanta* v. *Shashti Ram Sen* (3), *Mobarak Ali* v. *Amir Ali* (4).

Babu Dwarka Nath Chakravarti, *Dr. Dwarka Nath Mitter* and *Babu Sarat Kumar Mitra*, for the respondent. We are willing to return the security bonds the other items of claim are untenable owing to section 14 of the Patni Regulations and are barred by the principle of *res judicata*: *Juscurn Boid* v. *Pirthi Chand* (5), *Bijoy Chand* v. *Tinkari* (6), *Bijoy Chand* v. *Ashutosh* (7).

Cur. adv. vult.

MOOKERJEE J. This is an appeal by the plaintiff in a suit for recovery of money instituted by the auction-purchaser at a sale under the Patni Regulations, 1819, which was subsequently set aside. The facts material for the determination of the questions raised before us are really not in controversy, and may be briefly recited.

(1) (1897) I. L. R. 24 Calc. 616.
(2) (1906) 5 C. L. J. 59.
(3) (1899) I. L. R. 26 Calc. 836.
(4) (1873) 21 W. R. 252.
(5) (1918) I. L. R. 46 Calc 670; 23 C. W. N. 721.
(6) (1920) 24 C. W. N. 617.
(7) (1920) I. L. R. 48 Calc. 454; 25 C. W. N. 42.

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Patni Taluk Gopalnagar was sold under Regulation VIII of 1819 on the 15th May 1909, and was purchased by the plaintiff for Rs. 1,000. The father of the plaintiff and others were the patnidars under the defendant, the Maharaja of Burdwan. At the instance of one of the defaulters, who instituted a regular suit on the 14th April 1910, under section 14 of the Patni Regulations, the sale was set aside by the Subordinate Judge on the 22nd November 1911. The purchaser and the zamindar preferred separate appeals to this Court. These appeals were dismissed on the 19th July 1916. The purchaser thereupon instituted the present suit on the 18th July 1919 to recover from the zamindar the following sums of money:

(i) Rupees 550 in respect of purchase-money together with interest thereon.

(ii) Rent and cess paid by the plaintiff to the defendant during the time that plaintiff was in possession as purchaser.

(iii) Costs which the plaintiff had to pay in the High Court in the previous litigation.

(iv) The amount given as security by the plaintiff together with damages.

The defendant expressed his readiness to return the securities mentioned in the fourth item, but denied his liability to pay the amounts covered by the first three items. The Subordinate Judge has dismissed the suit; he has held the claim in respect of the first three items untenable under section 14 of the Patni Regulation, while he has come to the conclusion that there was no cause of action for the fourth item.

Section 14 of the Patni Regulation authorises the institution of a suit against the zamindar for the reversal of a sale and then provides as follows: "The

"purchaser shall be made a party in such suits and "upon decree passing for reversal of the sale, the Court "shall be careful to indemnify him against all loss at "the charge of the zamindar or person at whose "suit the sale may have been made". There is in our opinion no room for controversy that the first three items of the claim put forward in the present action might have been urged in the previous litigation.

The object of the Legislature plainly was to avoid multiplicity of litigation and to afford protection to an innocent purchaser, the sale in whose favour might be cancelled without default on his part. Thus, in *Baikuntha Nath* v. *Maharaja Mahatapchand* (1), it was ruled that on reversal of a patni sale the purchaser was entitled to a refund of his purchase-money and to recover his costs from the zamindar. In *Mobarak Ali* v. *Amir Ali* (2), the purchaser was declared entitled to a refund of the purchase-money with interest; and to the same effect is the decision in *Bijoychand* v. *Amritalal* (3). In *Tara Chand* v. *Nafar Ali* (4), it was held that on cancellation of the sale the purchaser can require the Court to compel the zamindar to indemnify him on account of all payments of rent which he may have made. But the point remains whether the remedy furnished by section 14 is exclusive. Sir Francis Maclean, C. J., was inclined to answer the question in the negative in *Radhamadhub* v. *Sastiram* (5). The facts of that litigation, however, did not attract the operation of section 14 and Banerjee, J., was more cautious in his statement when he observed that section 14 did not ordain that the remedy prescribed thereby was to be the sole remedy to which the auction-purchaser

(1) (1872) 17 W. R. 447.
(2) (1873) 21 W. R. 252.
(3) (1899) I. L. R. 27 Calc. 308.
(4) (1877) 1 C. L. R. 236.
(5) (1899) I. L. R. 26 Calc. 826.

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was entitled, notwithstanding that by virtue of any other provision of law he might be entitled to a remedy against any other person than the zamindar. In the case then before the Court, the purchaser was held entitled to maintain an action against the defaulters to reimburse himself in respect of sums paid by him as rent to the zamindar during the time that the sale was in force; these sums had clearly been paid by him as a person interested in the payment of money, which the defaulters were bound by law to pay. The question of the true scope of section 14, whether, and if so, how far, the remedy provided thereby in the purchaser's favour excludes all other remedies, was raised before the Judicial Committee in *Juscurn Boid* v. *Pirthi Chand* (1), but was left undecided. Sir Lawrence Jenkins, it is noticeable, expressed a strong inclination in favour of the view that section 14 should be held to make the remedy provided therein exclusive, unless such an interpretation was opposed to a long and uninterrupted course of construction to the contrary. It transpires, however, that the tendency of judicial decisions has been in favour of the view that section 14 furnishes an exclusive remedy: see *Tarachand* v. *Nafar Ali* (2), *Suresh Chandra* v. *Akkari* (3), *Bijoychand* v. *Tinkari* (4), *Bijoychand* v. *Ashutosh* (5). We are not unmindful that the actual decision in *Nagendra Nath* v. *Chandra Sekhar* (6), militates against this view; but the question as to the effect of section 14 was neither raised nor considered there. We are of opinion that the purchaser must have recourse to the remedy provided by section 14 to

(1) (1918) L. L. R. 46 Calc. 670; 23 C. W. N. 721.
(2) (1877) 1 C. L. R. 236.
(3) (1893) I. L. R. 20 Calc. 746.
(4) (1920) 24 C. W. N. 617.
(5) (1920) I. L. R. 48 Calc. 454; 25 C. W. N. 42.
(6) (1906) 5 C. L. J. 59.

the extent that it is available and that he cannot maintain a separate suit to obtain the relief which if he had so desired might have been granted to him against the zamindar in the suit for reversal of the sale.

In the present suit, the Subordinate Judge has pointed out that the purchaser did ask for relief in the suit instituted by the defaulters under section 14, but his prayer was not granted, as he was found to have made the purchase for the benefit of his father who was himself one of the defaulting patnidars. It further appears that in the appeal presented to this Court the plaintiff complained against the judgment of the Subordinate Judge refusing to award compensation to him; but this Court confirmed the decree of the Subordinate Judge. The view may consequently be well maintained that the claim for compensation urged by the plaintiff as defendant in the previous suit was overruled. From this standpoint, the claim is clearly barred and cannot be reagitated in this litigation. We hold accordingly that the Subordinate Judge has correctly found that the claim in respect of the first three items cannot be sustained.

As regards the fourth item, the respondent has expressed his willingness to return the security deposit, namely, the four promissory notes of the face value of Rs. 100 each and Rs. 26 in cash.

The result is that the decree made by the Subordinate Judge is affirmed, subject to the modification that the decree will direct the defendant to return to the plaintiff the security deposit mentioned above. As the appeal has substantially failed, the appellant must pay the respondent the costs in this Court.

RANKIN J. concurred.

A. S. M. A.

Appeal dismissed.