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in *Balkishen Das* v. *Run Bahadur Singh*(1). In that case as in the one before us, the agreement was to pay on default higher interest at one rupee per cent. per mensem from the date of the solehnama. Adverting to the contention that such an agreement was penal, the Judicial Committee said, "it was not a penalty, and even if it were so, the stipulation is not unreasonable, inasmuch as it was a mere substitution of interest at 12 instead of 6 per cent. per annum in a given state of circumstances." The true test is not whether the agreement is a contract to pay a given sum on its breach, but whether it is reasonable in the circumstances of the case or only substitution of a higher for a smaller rate of interest in a given state of circumstances. Following the decision of the Privy Council, we modify the decrees of the courts below by awarding to the plaintiff interest at 12 per cent. instead of 6 per cent. per annum from the date of the bond A to the date of realization, and his whole cost throughout, and confirm the decrees in other respects.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

1887. Nov. 4, Dec. 16.

VELAN (DEFENDANT No. 4), APPELLANT,

and

KUMARASAMI AND ANOTHER (DEFENDANT No. 2 AND PLAINTIFF), RESPONDENTS.*

Civil Procedure Code, 1859, *s.* 259—*Certificate of sale*—*Registration Act*, 1866, s. 49—*Proof of title without production of certificate*—Omnia presumuntur rite esse acta.

Assuming that s. 49 of the Registration Act, 1866, required that a certificate of the sale of land in execution of a decree passed under the Civil Procedure Code, 1859, should be registered, a plaintiff who has purchased land at such a sale is not bound to rely on the certificate to prove his title.

If it is proved *aliunde* that the sale took place and that possession was given, the Court should presume, after long lapse of time and possession by a mortgagee of the purchaser, that the sale was duly made by the Court.

APPEAL from the decree of C. Venkoba Rau, Subordinate Judge of Madura (West), reversing the decree of P. A. Lakshmana Chetti, District Munsif of Tirumangalam, in suit 525 of 1885.

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(1) I.L.R., 10 Cal., 305.

* Second Appeals 165 and 307 of 1887.

The facts necessary for the purpose of this report appear sufficiently from the judgment of the Court (Kernan and Wilkinson, JJ.).

Bhashyam Ayyangar for appellant.

Subramanya Ayyar for respondent No. 1.

JUDGMENT.—This is a suit to recover possession of certain lands in the possession of the defendants on payment of the mortgage amount.

The plaint lands originally belonged to the zamindar of Padamatur.

The plaintiff's case is that Kanaka Nachiar, the widow and representative of Gourivallaba Tevar, the last zamindar of Padamatur, who died in 1861, mortgaged the lands in 1866 to Pingala Krishna Rau (exhibit D); that in 1869 the lands having been attached in execution of a decree obtained by one Odayappa Chetti against the zamindar, Sethu Rau, the son of the mortgagee, purchased them; that after the death of Krishna Rau and Sethu Rau their heir and representative Krishanammal *alias* Sithabhai Ammal relinquished all her rights in favor of Rathabhai Ammal (exhibit B), who, in 1885, sold the lands to plaintiff (exhibit A), subject to a mortgage lien of Rs. 812-12-0 due under the mortgage bond executed by Sethu Rau to defendant No. 3 (exhibit M).

Defendant No. 2 (appellant in S.A. 307) pleaded, *inter alia*, that Sethu Rau acquired no right by the Court sale in 1869—no certificate of sale having been granted, or if granted, the certificate not having been registered, that in 1874 Saluga Tevar, the brother of the late zamindar, having sued defendant No. 3 for the land, a compromise (exhibit K) was entered into, by which defendant No. 3 relinquished all his rights to, and possession of, the land to Saluga Tevar, whose son, Periasami Tevar, assigned his rights to defendant No. 2 in 1882 (exhibit I), since when defendant No. 2 had been in possession as owner.

Defendant No. 4 (appellant in S.A. 165) admitted the validity of plaintiff's purchase from Rathabhai Ammal, but pleaded purchase from Periasami Tevar in 1878.

The District Munsif dismissed the suit on the ground that the plaintiff had acquired no valid title, inasmuch as it was not shown that the sale certificate said to have been obtained by Sethu Rau in 1869, though liable to compulsory registration, had been

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registered that it was not proved that plaintiff's vendor ever had possession.

The Subordinate Judge reversed the decree of the Munsif, holding that the production of the sale certificate was not necessary; that the registration of the sale certificate was not compulsory, and that Sethu Rau obtained a valid title under the Court sale.

The first question raised in second appeal is that, as no interest passed by the alleged sale in execution of the decree in Original Suit 5 of 1866, the plaintiff has no valid title. Original Suit 5 of 1866 was a suit instituted by Odayappa Chetti against the late zamindar, Kumarasami Peria Udayar Tevar, and his younger brother, Gouri Vallaba Tevar, and, as appears from (exhibit E), what was sold in execution of the decree obtained by Odayappa Chetti and purchased by Sethu Rau was "the right, title, and interest of the said zamindar alone." It is contended that the defendants in the said suit, who were cousins of the late zamindar, had no right to be treated as his representatives, and that as Kanaka Nachiar, the widow and sole representative of Gouri Vallaba Tevar, was no party to the suit, the sale in execution of that decree conferred no title on the purchaser, Sethu Rau. It does not appear that this objection was raised in either of the Courts below; defendant No. 2 (appellant in S.A. 307) relying on the invalidity of plaintiff's title owing to the non-registration of the certificate and his purchase from Periasami Tevar in 1882. The Courts below have held that that purchase was good and valid, and, if it be found that plaintiff acquired no valid title by the purchase in Court sale, it will be unnecessary to decide the question mentioned above. No doubt the Full Bench decision, *Srinivasa Sastri* v. *Seshayyangar*(1) was that the sale certificate under the Code of 1859 was the instrument whereby a transfer of the title and interest of the execution debtor was made, and that, therefore, under the Registration Act XX of 1866, s. 49, that certificate should be registered, and that, as it was not registered, evidence could not be given of it. If, therefore, it was necessary in this case to decide the same question, we are bound to follow that decision, or to refer the point for further consideration of a Full Bench.

In that case the decision in *Mussumat Buhuns Kowur* v. *Lalla Buhooree Lall*(2) was not brought to the notice of the Full Bench,

(1) I.L.R., 3 Mad., 37. (2) 14 M.I.A., 523.

nor did the Court consider it. Again the Privy Council held that the certificate did no more than create statutory evidence of the transfer in place of transfer by bill of sale. If that case was now considered by a Full Bench the Court would probably hold that neither the production of the certificate nor its registration was necessary when proof of the Court sale and delivery of possession was made (see the observation of Innes and Muttusami Ayyar, JJ., in *Velliyammal* v. *Katha*(1)). See also *Narasayya* v. *Jungam*(2), decided by the Chief Justice and Muttusami Ayyar, J., in which it is stated: "The language of Act VIII of 1859, which might have given colour to the contention that a certificate was a conveyance, was construed otherwise by the Privy Council."

However the question which we have to consider is whether the plaintiff is obliged to rely on the certificate. It has been found as a fact by the Munsif and by the Subordinate Judge that Sethu Rau purchased the property in the Court sale on 22nd October 1868, and that the sale was complete, that, on the same day, he mortgaged the lands to defendant No. 3, who was, after the date of his mortgage, in possession.

Plaintiff's title as transferee of Sethu Rau's title (subject to the legal question) is established by both Courts from the documents proved.

Defendant No. 3 got possession from Sethu Rau.

The question, therefore, is whether the purchase by Sethu Rau was not well proved without reference to the certificate. On principle it seems to us it was. There was a sale completed and possession was given. The rule of presumption, *omnia rite acta*, applies especially after such lapse of time, and long possession under the sale by the mortgagee from the purchaser, and recollecting that the principal documents to prove the confirmation order may have been either lost or destroyed under the order for destruction of records.

On authority also, we think it was not necessary for the plaintiff to prove either the certificate or registration of it. In *Velliyammal* v. *Katha*(1), above referred to, the Court, in giving judgment, remarks as follows on the decision in 14 More, p. 453: "If this be the effect of the grant of the certificate, it is clear such certificate is not necessary to pass the title. But then the question

(1) I.L.R., 5 Mad., 361. (2) I.L.R., 7 Mad., 420.

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comes whether a purchaser at a Court sale can recover in a suit without producing the certificate. If it is admitted, as is the case here, that the Court auction did take place, and that the property was sold to the person whom plaintiffs now represent—that would seem to be a sufficient admission that the title passed to that person."

In that case the sale by the Court was proved by the admission of the defendant. Defendant No. 2 here denies the sale, but the fact is proved against him. An admission by a party dispenses with other proof. But it is a form of proof (see Evidence Act, s. 17 and 31). When no admission is made of a relevant fact it may be proved *aliunde*. In *Jagan Nath* v. *Baldeo*(1), a Full Bench held that it was not incumbent on the purchaser to produce a certificate of the sale to him, and it was competent to him to prove his purchase *aliunde*. The Court observed that the confirmation of the sale to the purchaser under Act VIII of 1859 was *primâ facie* evidence of his title, and was sufficient to pass such title to him, of which a certificate, if afterwards obtained, would be merely evidence that the property so passed. In *Doorga Narain Sen* v. *Baney Madhub Mozoomdar*(2), and *Tara Prasad Mytee* v. *Nund Kishore Giri*(3), the fact of sale was admitted, and the Court held that the production of the sale certificate was not necessary, and that the order of confirmation passed the title. If we are right that the presumption we have above referred to is now to be made that all things were done by the Court, to give the purchaser a title, such as confirmation order, then this case stands on the same footing as those cases decided in Allahabad and Calcutta. We are therefore of opinion that on this main question we may confirm the Subordinate Judge's decision.

We dismiss both appeals.

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(1) I.L.R., 5 All., 305. (2) I.L.R., 7 Cal., 207.
(3) I.L.R., 9 Cal., 842.