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can be sustained to recover rent until a patta is tendered and accepted or a proper patta is tendered, and the tender of a proper patta is a condition precedent to the contract between the parties becoming actionable. It is a contradiction in terms to say that rent is due before the landlord is in a position to sue. When the landlord may sue for rent must depend on the terms of the contract in each case, and when the Legislature renders any contract actionable only on the occurrence of a particular event, no obligation can arise till that event occurs. By section 10 the amended patta relates back to the date of the suit brought for the enforcement of acceptance of the patta. In cases in which the landlord sues in time to enforce the acceptance of a patta, the landlord is not in a position to sue for rent until the decree passed under section 10 either amends the patta or declares it to be a proper patta. Otherwise a suit to enforce the acceptance of a proper patta may be pending in a Revenue Court for several years, and the claim for rent may be barred before the landlord acquires a right of action.

I am therefore of opinion that this suit is not barred. I set aside the decree of the District Munsif and remand the case for disposal on the merits. The costs hitherto incurred will abide and follow the result and be provided for in the revised judgment.

Civil Revision Petitions Nos. 43 to 50 follow.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

SUNDARA GOPALAN (DEFENDANT), PETITIONER,

v.

VENKATAVARADA AYYANGAR AND ANOTHER
(PLAINTIFF AND HIS REPRESENTATIVE), RESPONDENTS.*

1893.
September
22, 25.

Execution sale—Portion of the property sold belonging to a stranger—Civil Procedure Code—Act XIV of 1882, ss. 313, 315 and 316—Rights of a purchaser in an execution sale.

Where a Court sale in execution of a decree is not vitiated by fraud, the only extent to which the purchaser can claim relief is that indicated by s. 315 of the

* Civil Revision Petition No. 458 of 1892.

Civil Procedure Code. The effect of ss. 313, 315 and 316 of the Code is that the right, title and interest of the judgment-debtor passes to the purchaser at a Court sale subject, however, to the condition that the purchaser may recover back his purchase money when he finds that the judgment-debtor has no saleable interest at all.

The implied warranty of title in respect of sales by private contract cannot be extended to Court sales except so far as such extension is justified by the procedural law in India, viz., by s. 315 of the Civil Procedure Code.

Dorab Ally Khan v. Abdool Azees (L.R., 5 I.A., 116), followed.

PETITION under section 25 of Act IX of 1887 praying the High Court to revise the decree of P. Narayanasami, Subordinate Judge of Madura (West) in Small Cause suit No. 950 of 1891.

The facts of the case appear sufficiently for the purpose of this report from the judgment of the High Court. The lower Court decreed in favour of the plaintiffs, and the defendant preferred this petition.

Sundara Ayyar for petitioner.

Biligiri Ayyangar for respondent.

JUDGMENT.—The petitioner is the judgment-creditor in original suit No. 25 of 1881 on the file of the Subordinate Court (West) at Madura, and the counter-petitioner is the purchaser at the Court sale held in execution of the decree passed therein against one B. Krishnasami Chetty. The auction sale was held on the 27th July 1885, and it was since found that a portion of the property sold, valued at Rs. 60, belonged to one Velayudam at the date of the sale. The counter-petitioner thereupon claimed a refund of the purchase money, and the Subordinate Judge decreed the claim on the Small Cause side. It is contended for the petitioner that as Krishnasami Chetty had some saleable interest in the property sold, the counter-petitioner is entitled to no refund at all. It is true that in *Kunhamed v. Chathu*(1), it was held that where the judgment-debtor had some saleable interest in the property sold the Court had no jurisdiction to make an order under section 315 for refund of the purchase money or any part thereof, but the question that now arises for determination is whether the purchaser may, in a regular suit, claim a refund in proportion to the extent to which the judgment-debtor had no interest in the property sold. With reference to a Sheriff's sale the Privy Council held in *Dorab Ally Khan v. Abdool Azees*(2) that in India the vendor's liability to refund the purchase money in respect of a private sale is

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(1) I.L.B., 9 Mad., 437.

(2) L.B., 5 I.A., 116.

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governed by the English law relating to the sale of chattels and that law, as laid down in *Eichholz v. Bannister*(1), is that there is an implied warranty on the part of the seller that he is the owner of the goods. This is in accordance with the law as laid down in section 55, sub-section 2 of Act IV of 1882. But in the case before me, the sale was not a sale by private contract, but a sale in *invitum*, and under legal process it must, therefore, be governed by rules applicable to execution sales. The effect of a Court sale, as stated in section 316, Code of Civil Procedure, is that "so far as regards the parties to the suit and persons claiming "through or under them, the title to the property sold vests in the "purchaser," &c. The Court sale then is a sale of the judgment-debtor's interest such it was at the date of the sale according to section 316. By section 313, however, the purchaser is enabled to apply to the Court to set aside the sale on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court is authorized to make such order as it thinks fit. By section 315 it is provided that when it was found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser shall be entitled to receive back his purchase money (with or without interest) from any person to whom the purchase money has been paid. The result of the above-mentioned sections is that what passes to the purchaser at a Court sale is the right, title and interest of the judgment-debtor subject, however, to this condition, viz., that the purchaser may recover back his purchase money when he finds that the judgment-debtor had no saleable interest at all. The English rule, as stated by Lord St. Leonards, is that if a conveyance of real property is actually executed by all the necessary parties, and the purchaser is evicted by a title to which the covenants do not extend, he cannot recover back the purchase money either at law or in equity, and referring to that rule as governing all sales by private contract, the Privy Council point out in the case cited above that it is not applicable to a Sheriff's sale under a *fiery facias* in which the sale, as regards the owner of the thing sold, is in *invitum*, and made under colour of legal process. They say that a purchaser at a Sheriff's sale has at least very inadequate means of investigating the title of the judg-

(1) 34 L.J., C.B., 105.

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ment-debtor; all that is sold and bought is the right, title and interest of the judgment-debtor with all its defects, and the Sheriff who sells and executes the bill of sale is never called upon, and, if called upon, would refuse to execute any covenant of title. They observe then "it is perfectly clear that when the property has "been sold under a regular execution and the purchaser is evicted "afterwards under a title paramount to that of the judgment-debtor, he has no remedy either against the Sheriff or the judgment-debtor." Such being the law of England applicable to Sheriff's sales under a *feri facias*, the question is whether it is not applicable in India by reason of the fact that there is an implied warranty of title in India as is the case in the sale of chattels in England. The decision of the Privy Council seems to me to be an authority for the proposition that the implied warranty of title in respect of sales by private contract cannot be extended to Court sales, except so far as such extension is justified by the processual law in India.

I do not desire to be understood as suggesting that in case of fraud there would be no remedy, but this is not that case. What I hold is that where the Court sale is not vitiated by fraud, the only extent, to which the purchaser can claim relief, is that indicated by section 315 which recognizes the equity on which *Hitchcock v. Giddings*(1) was decided, viz., that the sale may be rescinded on the ground of mistake whether there was no saleable interest at all, even after a conveyance has been executed.

It follows, therefore, that the judgment-creditor cannot be treated as if he was the vendor, and the Court sale cannot be treated as if there was an implied warranty of title as in a private sale, except so far as is warranted by the language of section 315. The decree of the Subordinate Judge is set aside and the suit is dismissed with costs throughout.

(1) 4 Price, 135.
