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SHAMA CHARAN CHATTERJI v. MADHUB CHANDRA MOOKERJI.

question raised and decided being, whether the delivery of formal possession was a sufficient answer to a plea of adverse possession for more than 12 years. The remarks made in that case, however, support the view that a fresh cause of action arises at the time the decree-holder is put into possession, and that the form in which possession is given is really immaterial. In the majority of cases no doubt the formal delivery of possession by the officer of the Court would be sufficient. It is only in case of actual resistance probably that the officer would feel justified in forcibly ejecting the tenant.

But if the judgment-debtor remain in occupancy after formal delivery of possession, he thereby becomes a trespasser no less than if he were to vacate at the time and return the day after. And having thus become a trespasser, a fresh cause of action arises to the decree-holder who may thereupon sue for ejectment. The judgment-debtor has no ground for complaint in being thus twice sued; he is bound to obey the decree, and if he continues in possession after execution, he does so at his own risk. For these reasons I concur in dismissing the appeal.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Norris.

1884 *November* 27.

SOORJA KOER AND ANOTHER (PLAINTIFFS) *v.* NATH BUKSH SINGH AND ANOTHER (DEFENDANTS),

AND

CHOWRASI KOER (PLAINTIFF) *v.* NATH BUKSH SINGH AND ANOTHER (DEFENDANTS.)*

Maintenance—Property sold in execution of decree for maintenance—Subsequent suit to recover maintenance, and to follow property in hands of auction-purchaser.

A Hindu widow's right to recover maintenance is subject to the right of a purchaser of a portion of the family estate for valid consideration.

A obtained a personal decree against *B* for maintenance; at the sale in execution of this decree a portion of the family property was sold and pur-

* Appeals from Appellate Decrees Nos. 1334 and 1158 of 1883, against the decrees of Baboo Abinash Chunder Mitter, Officiating Second Subordinate Judge of Tirhoot, dated 19th of February 1883, affirming the decrees of Baboo Brijo Mohun Pershad, Munsiff of Durbhangah, dated the 23rd of June 1882.

chased by *C*. At this sale the widow gave notice that she claimed a right to recover maintenance from the family property.

In a subsequent suit by *A* against *B* and *C* to recover arrears of maintenance, *A* sought to follow the property in the hands of *C*. *Held*, that the fact of such notice being given at the time of the auction sale would not affect the rights of the auction-purchaser *C*, he having purchased at an auction sale held under a decree obtained in satisfaction of a valid family debt.

IN these cases it appeared that Soorja Koer and Sansar Pati Koer, respectively, the widow and widowed daughter of one Golab Roy, deceased, had jointly, and that one Chowrasi, the daughter-in-law of Golab Roy, had separately each instituted a suit and severally obtained decrees against the son of Golab Roy, one Nath Bûksh Singh for maintenance, the decrees in no way declaring that the maintenance given should be a charge upon the estate of Golab Roy, deceased. In execution of the joint decree obtained by Soorja Koer and Sansar Pati Koer certain property, formerly belonging to Golab Roy, was put up for sale, and at the sale on the 15th March 1882, when a portion of the property was purchased by Isri Singh, the decree-holders in both suits gave notice that they claimed a right to maintenance out of the estate.

On the 4th April 1882, Soorja Koer and Sansar Pati Koer jointly, and Chowrasi Koer separately, each brought a suit for subsequent arrears of maintenance, praying for money decrees against Nath Buksh Singh and Isri Singh, it being alleged in both suits that the former purchased the property, sold in execution under the decree above mentioned, benami in the name of Isri Singh.

The Munsiff, in one judgment governing both cases, held that Isri Singh was the actual purchaser of the property at the execution sale of the 15th March 1882, and he therefore dismissed the suit as against him, as he did not consider the property to be liable to the claim for maintenance, but gave the plaintiffs a decree against Nath Buksh Singh.

The plaintiffs appealed to the Subordinate Judge, contending that the purchaser at the auction sale, having purchased with notice of the plaintiffs' claim to maintenance, ought to be held liable.

The Subordinate Judge held that Isri Singh must be taken

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to have had notice of the claims for maintenance at the time of his auction purchase; but that the property of Golab Roy, having been sold for a valid debt, could not be followed into the hands of a purchaser for the purpose of making it liable for the maintenance claimed, simply because notice was given at the time of sale. He, therefore, dismissed the appeals.

The plaintiffs appealed to the High Court.

Baboo *Rajendro Nath Bose* for the appellants.

Baboo *Mohesh Chunder Chowdry* and Munshi *Mahomed Yusuf* for the respondents.

Judgments of the Court (MITTER and NORRIS, JJ.) were as follows:—

In this case (No. 1158) the plaintiff, appellant, is the daughter-in-law of one Golab Roy, and the defendant No. 1, Nath Buksh Singh who is his *kartaputer*, is in possession of his estate. It appears that the plaintiff, appellant, before us obtained a decree for maintenance against the defendant No. 1. Similarly the widow of Golab Roy, namely, Soorja Koer and her daughter, obtained a decree for maintenance against the defendant No. 1. In execution of this latter decree, a portion of the family property was brought to sale, and purchased by the defendant No. 2, the respondent before us.

The present suit was brought, both against the defendant No. 1 and the defendant No. 2, to recover maintenance from the month of Augrahan 1286 to 20th Cheyt 1289. Plaintiff, in her plaint, sued to recover a personal decree against both these defendants. Her allegation was that the purchase of a portion of the family property by defendant No. 2 was a benami purchase, and that the defendant No. 1 was the real purchaser.

The suit has been dismissed as against the defendant No. 2. The lower Courts find that defendant No. 2 was the real purchaser of a portion of the family estate.

It is contended before us in this second appeal that the lower Courts are not right in dismissing the suit wholly against defendant No 2; that under the Hindu law the maintenance of a widow is a charge upon the entire family estate; that before the particular portion of the estate, of which the defendant No. 2 became a purchaser, was sold, the plaintiff, appellant,

before us gave notice of her right to recover maintenance out of the estate of Golab Roy; and that, therefore, at any rate, the lower Courts should have declared that the amount decreed as maintenance was to be considered as a charge upon the portion of the family estate purchased by the defendant No. 2.

We are of opinion that this contention is not valid. A somewhat similar question to the one raised before us was decided in the case of *Lakshman Ram Chandra Joshi* v. *Satyabhama Bai* (1). In that case the nature of the lien which a Hindu widow has over the family estate in respect of her claim for maintenance is explained and defined. It was held there, that if the sale takes place for the satisfaction of a family debt, or any other debt which would make the sale valid according to the Mitakshara law, the purchaser would not be affected by any notice on the part of the widow, and the property purchased would not be charged with any lien on account of widow's maintenance. Applying that rule to this case, we are of opinion that the lower Courts have come to a right decision. Here the property was brought to sale in execution of a decree for maintenance obtained by the widow and daughter-in-law of Golab Roy, under such circumstances as would pass the entire property. It would be a valid sale under the Mitakshara law.

That being so the daughter-in-law has no right to follow the property sold in the hands of the purchaser, although there was a notice of her right given before the sale.

We therefore dismiss this appeal with costs.

In this case (No. 1334) the appellants are Mussummat Soorja Koer and another, the decree-holders, in execution of whose decree a portion of the family estate was sold. Before the sale took place they also gave notice of their right to recover maintenance from the family estate. It is true that in this case the decree-holders, who were bringing the property to sale, gave the notice mentioned above, therefore in this respect there is a difference between this case and the Bombay decision cited above, but the principle of the decision would apply. Notice in this

(1) I. L. R., 2 Bom., 494.

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case would not give to the widow any higher rights than what she possessed under the Hindu law, and the Bombay decision lays down what the Hindu law is upon the point. It lays down that the widow's right to recover maintenance is subject to the right of the purchaser of a portion of the family estate for valid consideration.

Therefore, it is clear that under the Hindu law, the plaintiffs, appellants, have no right to follow this property in the hands of the purchaser. That being so, the notice of their right to recover maintenance from the family estate cannot affect the rights of defendant No. 2. Under the Hindu law the widow's rights are limited in the way stated above. The defendant No. 2 purchased this property in execution of a decree for maintenance. Under the Hindu law such a purchaser acquires a superior right to that of the widow to recover maintenance from the estate.

In this case also, therefore, upon the principle laid down in the Bombay decision cited above, the judgments of the lower Courts appear to be correct.

We, therefore, dismiss this appeal also with costs.

Appeals dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Mitter and Mr. Justice Norris.

1884
December 16.

BEHARI MAHTON, APPELLANT *v.* QUEEN EMPRESS, RESPONDENT.*

Charge—Accused entitled to know exact value of charge made against him—Criminal Procedure Code—Act X of 1882, *s.* 221.

An accused is entitled to know with certainty and accuracy the exact value of the charge brought against him, and unless he has this knowledge he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially true in cases where it is sought to implicate him for acts not committed by himself, but by others with whom he was in company.

Criminal Appeal No. 680 of 1884, against the order and sentence of T. D. Beighton, Esq., Sessions Judge of Patna, dated the 10th of July 1884.