

water-supply, dependent on the good will of the Edakudi Mirasidars, we ought to hold that that act must have damaged the plaintiff.

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ODAYAN
v.
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AIYAR.

I concur therefore in dismissing the second appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

KRISHNA SATAPASTI (FIRST DEFENDANT), APPELLANT,

v.

SARASVATULA SAMBASIVA ROW (PLAINTIFF), RESPONDENT.*

1908
January
23, 24.

Civil Procedure Code, Act XIV of 1882, s. 244—Auction purchaser not a representative of decree-holder when the question is the right of such purchaser to possession against judgment debtor.

The purchaser at an auction sale, held in execution of a decree, is not the representative of the decree-holder, when the question to be decided is the right of such auction purchaser to possession as against the judgment-debtor.

Section 244 of the Code of Civil Procedure is no bar to a separate suit by the auction purchaser for possession of the purchased property from the judgment-debtor

Kishori Mohun Roy Chowdry v. Chunder Nath Pal (I.L.R., 14 Calc., 644), followed.

Manickka Odayan v. Rajagopala Pillai, I.L.R., 30 Mad., 507, doubted.

Sandhu Taraganar v. Hussain Sahib (I.L.R., 28 Mad., 87), considered.

Obiter:—The purchaser from a decree-holder is, but the purchaser at a Court sale is not, a representative of the decree-holder for the purposes of section 244.

Suit for redemption.

The suit-land, which belonged to the first defendant, was purchased by the plaintiff's late father, Sarasvatula Venkata Kondayya Pantulu, for Rs. 21, subject to the second defendant's mortgage, at the Court-sale held in execution of the decree against the first defendant in Original Suit No. 560 of 1885 on the file of this Court. The plaintiff now sued for its redemption.

The first defendant contends that, subsequent to the Court-sale, the plaintiff's father orally conveyed the land to him for

* Second Appeal No. 478 of 1905, presented against the decree of W. B. Ayling, Esq., District Judge of Ganjam at Berhampur, in Appeal Suit No. 287 of 1904, presented against the decree of M. R. Ry. P. Lakshminarasu Pantulu, District Munsif of Berhampur, in Original Suit No. 353 of 1903.

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Rs. 31, in 1893, on the understanding that he should discharge the second defendant's mortgage-debt, and that he, accordingly, paid the mortgage-money to the second defendant and took possession of the land from him. The first defendant was supported by the second defendant, who disclaimed all interest in the land.

The following issues were framed :—

1. Whether or not the suit is sustainable ?
2. Whether the oral sale stated by the first defendant is true and valid ?

On the first issue the Munsif found the suit was sustainable ; on the second he held the oral sale not proved. He passed a decree in favour of the plaintiff, which decree was affirmed on appeal.

The first defendant appealed to the High Court.

K Narayana Rao for appellant.

T. V. Seshagiri Ayyar for respondent.

JUDGMENT.—We agree with the decision in *Kishori Mohun Roy Chowdry v. Chunder Nath Pai*(1), which was followed by the District Judge.

Mr. Narayana Rao has raised a point which was not taken in either of the Courts below, viz., that the suit was not maintainable by reason of the provisions of section 244 of the Code of Civil Procedure. He relied on the decisions in *Sandhu Taraganar v. Hussain Sahib*(2) and *Manikka Odayan v. Rajagopala Pillai*(3).

It seems to us that *Sandhu Taraganar v. Hussain Sahib*(2) is distinguishable on the ground that in that case the party who sued for possession was a purchaser from the decree-holder who had purchased at Court auction. He derived his title from the decree-holder. In the present case the purchaser did not purchase from the decree-holder and did not derive title from him.

We do not think that, in the present case, the purchaser who obtained his title by purchase at Court auction and did not derive it by purchase from the decree-holder, is the representative of the decree-holder within the meaning of the section. No doubt in *Manikka Odayan v. Rajagopala Pillai*(3), this Court in considering the question of the right of a purchaser at Court auction to set aside a sale under section 310A, held that he was the representative of the decree-holder for the purposes of section 244.

(1) I. L. R., 14 Calc., 644.

(2) I. L. R., 28 Mad., 87.

(3) I. L. R., 30 Mad., 507.

But the learned Judges in so holding seem to have regarded *Sandhu Taraganar v. Hussain Sahib*(1) as deciding that an auction purchaser is the representative of a decree-holder for the purposes of section 244 and to have followed that case. What was actually decided in *Sandhu Taraganar v. Hussain Sahib*(1) was that a purchaser from a decree-holder who had purchased in Court auction was a "representative."

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But however this may be, where the question is the right of a purchaser at Court auction to possession as against the judgment-debtor, we are of opinion that the purchaser is not the representative of the judgment-creditor within the meaning of the section.

This being our view it is not necessary for us to decide whether the question of the right of a purchaser at Court auction to recover possession from the judgment-debtor is a question relating to the execution of the decree within the meaning of section 244.

The second appeal is dismissed with costs.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Wallis and
Mr. Justice Miller.*

SAMBASIVA AYYAR AND OTHERS (DEFENDANTS).

APPELLANTS

v.

VENKATASWARA AYYAR (LEGAL REPRESENTATIVE OF THE
PLAINTIFF), RESPONDENT.*

Hindu Law—Gift to widow, construction of—

When a suit brought by a Hindu widow against her deceased husband's co-parceners for possession of her divided husband's share was compromised and certain lands were given to her and another donee in equal shares as full owners and the instrument recited that the gift was made out of motives of generosity :

(1) I.L.R., 28 Mad. 87.

* Appeal No. 19 of 1907, presented under section 15 of the Letters Patent against the judgment of (Miller and Wallis, JJ.) in Second Appeal No. 638 of 1904, confirming under sections 575 and 587 of the Code of Civil Procedure the decree of the District Court of Trichinopoly in Appeal Suit No. 8 of 1903 presented against the decree of the District Munsif's Court of Kulittalai in Original Suit No. 293 of 1902.

1907.
October
14, 21.
November
4.