

Mahomedan Registrar shall keep certain books, and amongst them Book I, which is a register of marriages in the form "A" contained in the schedule annexed to the Act. Now, the 14th clause of form "A" is: "Special conditions, if any." It is clear, therefore, that the special condition relied upon in this case was a matter which, under the provisions of the Act, it was the duty of the Mahomedan Registrar to enter in the register kept in accordance with the directions of the Act.

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This being so, we think that the copy of the entry in the register was legal evidence.

We have heard the learned vakil on the other points raised in the case, and we do not think there is any ground upon which we can interfere.

The appeal is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Wilson and Mr. Justice Tottenham.*

NURSING NARAIN SINGH AND ANOTHER (DEFENDANTS) v. ROGHOOBUR SINGH (PLAINTIFF). \*

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*Execution Sale—Money decree—Mortgage decree—Notice—Civil Procedure Code (Act XIV of 1882), s. 287.*

A creditor obtained two decrees against his debtor, one being a mortgage decree to enforce his lien on certain property, and the other a simple money decree. In execution of the second decree the property over which the judgment-creditor had a lien was sold and was purchased by a third person. Subsequently, in execution of the first decree, at the instance of the judgment-creditor, this same property was advertised for sale, but on the auction-purchaser objecting, the judgment-creditor brought a suit against him to enforce his lien on the property in the hands of the auction-purchaser. *Held*, that it lay on the plaintiff, in order to entitle him to recover in the suit, to show that the defendants purchased with notice of the lien.

*Held*, further, that the fact that for some purpose at some time or other the judgment-creditor informed the Court of the mortgage is not evidence of notice on the auction-purchaser.

One Hanuman Dutt Singh borrowed two sums of money from

\* Appeal from Appellate Decree No. 665 of 1883, against the decree of Baboo Bolak Chand, Subordinate Judge of Bhagulpoore, dated 22nd of December 1882, reversing the decree of Syed Abdul Karim, Munsiff of Begusaraie, dated 20th of January 1882.

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Roghobur Singh, the plaintiff in this suit—one on the 9th Aughran 1273 F., and the other on the 11th. The debts not being repaid, the plaintiff, after the death of Hanuman Singh, brought a suit against his sons as heirs, Raghunandan Singh and others, and obtained on the 31st December 1873 a decree to enforce his lien on  $2\frac{1}{2}$  gundas share out of a 2-anna *putti* of mouzah Syedpore Sulha in respect of the loan of the 11th Aughran. The plaintiff also obtained a money decree against Raghunandan and others on the 15th July 1876 in respect of the other loan. In execution of the latter decree  $2\frac{1}{2}$  gundas share out of the 2-anna *putti* which formed the subject of the mortgage decree was brought to sale on the 7th January 1878. Execution was then taken out on the decree of the 31st December 1873, and the mortgaged share of  $2\frac{1}{2}$  gundas share out of the 2-anna *putti* was advertised for sale; but on the petition of the defendants, auction-purchasers under the money decree, the sale was stopped and the plaintiff brought a suit to enforce his lien on the property in the hands of the auction-purchasers. The Court of first instance dismissed the claim, on the ground that, although the plaintiff had by a petition of the 29th November 1877 brought the mortgage alleged by him to the notice of the Court, it did not appear that “the fact of the mortgage was proclaimed at the time of the sale in such a manner as to make the defendants, the purchasers, aware of it.” On appeal the Subordinate Judge decreed the claim, and thereupon an appeal was preferred to the High Court.

*Baboo Rasbehari Ghose* for the appellants.

*Mr. C. Gregory* for the respondent.

The judgment of the Court (WILSON and TOTTENHAM, JJ.) was delivered by

WILSON, J. (TOTTENHAM, J., concurring).—We are unable to concur in the view taken by the lower Appellate Court in this case.

It appears that the plaintiff held two decrees against the same person; one a mere money decree and the other a mortgage decree. In execution of his money decree he caused to be sold the property which was the subject of his mortgage decree; and

he now in this suit proposes to proceed on his mortgage decree against that property in the hands of the auction-purchaser.

The law, it appears to us, has long been settled on this matter; that one who has caused the property of his judgment-debtor to be sold in execution cannot afterwards set up any claim of his own against that property unless he shows that the purchaser purchased with notice of his claim. Several cases have been referred to before us which seem to show that. The first case is the case of *Dullab Sircar v. Krishna Kumar Bakshi* (1); the second, which is to the same effect, is the case of *Doolee Chund v. Mussamut Oomda Begum* (2); and there is the more recent case of *Tukaram Bia Atmaran v. Ram Chandra Bia Budaram* (3). Those cases were all decided when the former Procedure Code was in force. The matter is even stronger under the Code now in operation, because s. 287 of the present Code expressly requires that every incumbrance to which the property is liable shall be inserted in the sale proclamation. The law therefore remains the same now as then, the reason for it being somewhat stronger. It lies therefore on the plaintiff, in order to entitle him to recover in this suit, to show that the defendant purchased with notice of his claim; and the Subordinate Judge came to the conclusion that he did purchase with notice. That finding of course would be binding upon us if there was any evidence on which it could properly be based. But it is admitted by the pleaders on both sides that there is no evidence bearing on the matter except that which is referred to in full by the Munsiff in his judgment at page 5 of the Paper-book under the head "finding on the first issue." The Munsiff says: "The onus of proving whether the defendants did or did not purchase the 2½ gundas *barari* share of mouzah Syedpore Sulha with knowledge of the debt alleged by the plaintiff is on the plaintiff. But he has not filed any documentary evidence to show that the lien was proclaimed at the time of sale of the *barari* share aforesaid; and it is admitted that there was no oral evidence on the subject at all. If such proclamation be not shown, the mere filing of the

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(1) 3 B. L. R., 407; 12 W. R. 303.

(2) 24 W. R., 263.

(3) I. L. R., 1 Bom., 314.

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petition, dated the 29th November 1877, made by the plaintiff is not enough to prove the said proclamation, because it appears from the above copy that the plaintiff had brought the mortgage alleged by him to the notice of the Court. But it has not at all been shown on behalf of the plaintiff that the fact of the mortgage was proclaimed at the time of the sale in such a manner as to make the defendants, purchasers, aware of it." The only fact, therefore, which is in evidence and which could have any bearing on this matter in the plaintiff's favor, is that, on the 29th November 1877, at what stage of the proceedings it does not appear, he filed a petition in which he informed the Court of his mortgage. If there were a charge against the plaintiff of having deliberately and fraudulently concealed his mortgage, no doubt this matter would be of considerable importance. But the fact that, for some purpose at some time or other, he informed the Court of the mortgage is not evidence upon which the conclusion could be arrived at that the defendants purchased with notice.

For this reason we think that the decree of the Subordinate Judge must be reversed and that of the Munsiff affirmed.

The appellant will have his cost in this and the lower Appellate Court.

*Appeal allowed.*

*Before Mr. Justice Wilson and Mr. Justice Tottenham.*

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AUSHOOTOSH CHANDRA AND ANOTHER (PETITIONERS) v. TARA PRASANNA ROY (OPPOSITE PARTY)\*

*Compromise and decree thereon—Application to set aside compromise—Review of judgment—New suit.*

For the purpose of setting aside a decree passed in pursuance of a compromise come to out of Court, there are two available modes of procedure—(1) by suit; (2) by a review of the judgment sought to be set aside; the latter being the more regular mode of procedure. *Lalji Sahu v. The Collector of Tirhoot* (1); *Mewa Lal Thakur v. Bhujhun Jha* (2); *Gilbert v. Bndean* (3) followed.

THIS was a rule obtained by Aushootosh Chandra and his brother calling upon one Tara Prasanna Roy to show cause why a

\* Civil Rule No. 272 of 1884.

(1) 6 B. L. R., 649.

(2) 13 B. L. R. Ap. 11.

(3) L. R. 9 Ch. D. 259.