

1883
 CHUNDER
 NATH ROY
 v.
 BHOXRUB
 CHUNDER
 SUREMA ROY.

with notice of a prior agreement for sale, shall not be allowed to retain the property as against the person claiming under the prior agreement.

It has been argued that Mr. Justice Pontifex, in the case of *Fuzluddeen Khan v. Fakir Mohamed Khan* (1), has expressed an opinion adverse to that adopted by Justices Mitter and Maclean. But it will be found that the equitable doctrine upon which those learned Judges acted did not apply to the last mentioned case at all.

It is true that in the course of his judgment Mr. Justice Pontifex used some expressions which might be construed in favour of the appellant's argument, but those expressions were not material for the purposes of the case, because both he and I distinctly decided that no notice was proved.

The very principle, therefore, upon which Mr. Justice Mitter's judgment proceeds was inapplicable to the case decided by Mr. Justice Pontifex and myself.

It appears also that Mr. Justice Mitter's view is supported by a decision of the Bombay Court (2).

The appeal will be dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Pigot.

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 May 28.

JOHUR MULL KHOORBA v. TARANKISTO DEB AND OTHERS.*
Sale in execution of Decree—Certificate of Purchase by Registrar—Conveyance—Suit for Partition—Declaration of right to share—Rules of Court 415, 431.

The position of a purchaser at a sale in execution of a decree of the High Court after he has obtained a certificate from the Registrar under Rule 415 of the Rules of Court, is that of a person clothed with a right to a conveyance in virtue of a contract; he does not hold save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed the purchaser is entitled to a conveyance, and until he obtains a conveyance the property in the estate purchased does not, having regard to Rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as

* *Note.*—In this case the plaintiff preferred an appeal which was dismissed on the 28th of January 1884, the appellant not appearing.

(1) I. L. R. 5 Cal., 386; 4 O. L. R., 257.

(2) *Panha Khamaji v. Patta Upaji*, 12 Bom. H. C. 179.

against the defendant in that suit is an equitable estate and a right to a conveyance of the property. And, therefore, as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property.

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THIS was a suit for a declaration of the plaintiff's right to certain property sold by the Court under a decree, and for partition.

The plaint stated that three brothers, Prosunno Narain Deb, Woopendro Narain Deb, and Shib Narain Deb, were jointly entitled to certain properties, and that by deed Prosunno Narain and Shib Narain each conveyed a one-sixth share in the properties to Woopendro Narain. On the 29th of May 1875, Woopendro Narain mortgaged his share in the properties. The mortgagee on the 19th of May 1876 obtained a decree for sale of the mortgaged properties.

On the 7th of June 1879 the properties were put up for sale in lots by the Registrar, and the present plaintiff purchased some of the lots, and obtained a certificate that he was the purchaser from the Registrar under Rule 415 of the Rules of Court, but no conveyance to him, such as is provided for under Rule 431, was executed. He now sued for a declaration of his rights under the purchase and for a partition, making the various members of the joint family defendants.

Mr. *Paulit* and Mr. *Mitter* for the plaintiff.

Mr. *Bonnerjee* and Mr. *M. P. Gasper* for the defendant Tarankisto Deb.

Mr. *Dutt*, Mr. *Apear*, Mr. *Wilkinson*, Mr. *Agnew* and Mr. *O'Kinealy* for the other defendants.

Mr. *Mitter* tendered the Registrar's certificate as showing the plaintiff's title.

Mr. *Bonnerjee* objected. The proper proof is the conveyance under Rule 431. The preliminary steps are not evidence; they would only be relevant if an objection was taken to the validity of the conveyance. The certificate is merely proof of a right to a conveyance. It is the conveyance that vests the property, not the sale.

Mr. *Mitter*.—The certificate is part of the plaintiff's title; it shows what properties were sold and who was the purchaser.

1888 [PIGOT, J.—The question is whether the property was assigned, and the way to prove that is by the assignment.] No conveyance is necessary. The plaintiff was declared to be the purchaser by the Registrar, and the certificate is relevant as showing that. [PIGOT, J.—The fact that the plaintiff was the purchaser and paid the deposit does not give him a title, Rule 481]. A conveyance is not made absolutely necessary by the Rules. A sale certificate is necessary, because possession cannot be given without it—Civil Procedure Code, s. 318. If the purchaser by accepting the title and paying the purchase-money can claim possession, why should a conveyance be necessary? The parties are Hindus, and no conveyance is necessary; the property passed as soon as the money was paid, and the plaintiff declared to be the purchaser. A sale certificate when confirmed passes the property—*Tara Prasad Mytee v. Nund Kishore Giri* (1).

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Rule 408 provides that the Registrar shall make an entry in his note-book declaring the highest bidder to be the purchaser, and when that is certified it is conclusive under Rule 564.

PIGOT, J.—The plaintiff claims as a purchaser of the share and interest of Woopendra Narain (who is mentioned in the 7th, 9th, and 14th paragraphs of the plaint) in certain family property in which Woopendra Narain is stated to have had an interest, together with the defendants, or those whom they represent, by inheritance, and also under the provisions of the deed mentioned in the 9th paragraph of the plaint.

Woopendra Narain mortgaged his share in the property (described in the plaint simply as lots one to five); and under a decree in a suit brought on the mortgage, the property mentioned in the mortgage was sold under the Rules for the sale of mortgaged property.

The plaintiff became a purchaser of part of the property at the sale by the Registrar under the decree, and he now prays for a declaration of his rights under the purchase; he submits that he is entitled to specific shares in the properties mentioned, and prays in the alternative for a declaration as to how much he so became entitled to, and for a partition.

(1) I. L. R. 9 Cal. 482.

The sale took place, as stated in the plaint, under the rules for the sale of mortgaged property. The Registrar certified the result of the sale under Rule 415, and no application appears to have been made to discharge or vary the certificate, which would under Rule 417 be deemed to be confirmed, unless such application were made within the time prescribed by the Rules.

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But no conveyance, such as is contemplated by Rule 431, was executed. The plaintiff relies upon the certificate issued by the Registrar after the sale by him, and argues that that sale passed the property—no application such as is contemplated by Rule 417 having been made, and the sale mentioned in the certificate having thus become by virtue of that rule confirmed. But I don't think that gives a title such as to enable the plaintiff to maintain this suit. I regard his position as that of a person clothed with a right to a conveyance in virtue of a contract of sale; he does not hold, save as regards the parties to the contract of sale, the position of owner. Here the sale having become confirmed, the purchaser is entitled to a conveyance, and until he obtained a conveyance I do not think that, having regard to Rule 431, the property in the estate purchased passed to him so as to give him rights as against parties not bound by the decree under which the sale took place, and as regards them I consider his position to be analogous to the position of a purchaser as described for instance by Cottenham, L.C., in *Tasker v. Small* (1).

I have been referred to a case, *Tara Prasad Mytes v. Nund Kishore Giri* (2) decided this year. But I apprehend that the learned Judges in that case said no more than that a sale under the Code of Civil Procedure when confirmed by the Court passes the property.

That decision does not touch this case. Here there was no certificate of sale issued under the Code, and no confirmation of a sale so certified. I learn from the Registrar that Rule 431 was drawn up in contemplation of this point. After consideration by Sir Richard Couch, and the rest of the Court, this rule was expressly framed so as to exclude the issue of a certificate under the Code. The result is that there passed to the plaintiff, not the

(1) 3 M. & Cr. 71, 70.

(2) I. L. R., 9 Calc., 482.

1888 estate in the property purchased, but only as regards the defendant
 JOHUR MULL in the suit, an equitable estate and a right to a conveyance of the
 KHOORRA property.
 v.
 TABANKISTO The estate in the property purchased not having passed to
 DAB, the plaintiff, he is not entitled to maintain a suit for partition; he
 could not on a partition give a good conveyance to the other
 parties interested in the estate, nor is he entitled as against them to
 the declaration prayed for.

The suit is dismissed with costs.

Attorney for the plaintiff: Baboo N. C. Bose.

Attorneys for the defendants: *Sen & Co.*, Baboo Bolya Chand
 Dutt and Baboo Preonath Bose.

APPELLATE CIVIL.

1888 *Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice*
 December 12. *McDonell.*

IN THE MATTER OF THE PETITION OF KRISTO LALL NAG.*
Legal Practitioners Act (XVIII of 1879) ss. 15 and 40—Interim Suspension
—Police papers.

Depositions of witnesses, or confessions taken at a police investigation are not, as far as their subject-matter is concerned, any more the property of the police than the property of the prisoners, and a pleader is not guilty of misconduct of any kind in making use of such documents for the benefit of his client, when delivered to him by the client, however improperly the client may have become possessed of such documents, provided the pleader is neither party nor privy to their obtainment.

The power of *interim* suspension given under s. 14 (cl. 5) of Act XVII of 1879, when read with s. 40 of the same Act, can only be exercised after the pleader has been heard in his defence and pending the investigation and orders of the High Court.

In this case one Kristo Lall Nag, a first grade pleader, practising at Noakhally, whilst defending one Chand Myan on a preliminary enquiry into a case of dacoity, put certain questions to the witnesses, which tended to show that he was in possession of copies of certain police investigation papers. It subsequently was proved that he had in his possession copies of the confessions of two men who were charged jointly with his client. At the preliminary enquiry Chand Myan was discharged, but the other

* Rule No. 1142 of 1883, against the order of Mr. H. W. Barber, Deputy Magistrate of Noakhally, dated the 30th August 1883.