

1876.  
 HASSAN ALI  
 v.  
 NAGA MAL.

the same, and, indeed, looking to the grounds upon which the objection to such adoption is based under the Hindu law, it would have more force in the case of the adoption of a daughter's son than of a sister's son.

1876  
 August 26.

## APPELLATE CIVIL.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*)

JAN MUHAMMAD (DEFENDANT) v. ILAHI BAKSH (PLAINTIFF).\*

*Act VIII of 1859, s. 260—Certified Purchaser.*

The certified purchaser of certain property at a sale in execution of decree sued to establish his right to the property and for possession thereof.

*Held* that the defendant in the suit was not precluded by s. 260, Act VIII of 1859, from resisting the suit on the ground that he was the actual purchaser of the property.

THIS was a suit to establish the plaintiff's right to a moiety of a house and garden, and for possession, by partition, of the same, the plaintiff claiming as certified purchaser of the property at a sale in execution of decree. The defendant urged that he was the actual purchaser of the property, relying on a petition presented by the plaintiff to the Court executing the decree in which he had stated that the defendant was the actual purchaser and had paid the purchase-money, and that he had made the purchase on behalf of the defendant, to whom he prayed the sale-certificate might be granted. The Court executing the decree refused the application and granted the certificate to the plaintiff. He further urged that the property belonged to him before the date of the sale and was not the subject of the sale. The Court of first instance gave the plaintiff a decree. The lower appellate Court found that the property belonged to the judgment-debtor and was the subject of the sale, and held that the defendant was precluded by s. 260, Act VIII of 1859, from raising the plea that he was the actual purchaser.

On special appeal to the High Court by the defendant it was contended that s. 260, Act VIII of 1859, did not apply, and the question who was the actual purchaser should have been tried and determined by the lower appellate Court on the merits.

\* Special Appeal, No. 1133 of 1875, from a decree of the Subordinate Judge of Moradabad, dated the 20th July, 1875, affirming a decree of the Munsiff of Nagina, dated the 16th January, 1875.

Munshi *Hanuman Parshad* and Munshi *Kashi Parshad*, for the appellant.

The *Senior Government Pleader* (*Lala Juala Parshad*), for the respondent.

The judgment of the Court (after stating the facts of the case) was as follows :

In our opinion the Court has taken an erroneous view of the law. All that s. 260 declares is that "any suit brought against the certified purchaser on the ground that the purchase was made on behalf of another person not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed." The law will not, therefore, in strictness apply to this case, where it is the certified purchaser who is suing to enforce his alleged purchase, and where the objection is taken by the defendant who is in possession. The section should be construed literally and applied strictly. The Court will not apply s. 260 so as to assist the certified purchaser to enforce his claim against the party in possession, by relieving him from the necessity of showing the justice of his claim or excluding inquiry as to its fraudulent character. This view of the law is supported by the Privy Council rulings in *Buhuns Koonwur v. Lalla Buhoree Lall* (1), and in *Lokhee Narain Roy v. Kalypuddo Bandopadhya* (2). We remand the case for trial under s. 354, Act VIII of 1859, of the issue whether plaintiff or defendant was the real purchaser at auction of the property in suit.

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JAN  
MUHAMMAD  
v.  
ILAHI BAKSH.

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## APPELLATE CIVIL.

1876  
August 21.

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(*Mr. Justice Turner and Mr. Justice Spankie.*)

MAHABIR PARSHAD AND ANOTHER (PLAINTIFFS) v. DEBI DIAL AND OTHERS (DEFENDANTS).\*

*Pre-emption—Conditional Decree.*

Where a share in a certain patti was sold by the holder of the share to a stranger, and three persons, holding equal shares in the patti, were equally entitled under the village administration-paper to the right of pre-emption of the share,

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\* Special Appeal, No. 279 of 1876, against a decree of the Judge of Gorakhpur, dated the 23rd December, 1875, affirming a decree of the Munsif of Deoria, dated the 8th September, 1875.

(1) 10 B. L. R. 159; S. C., 13 W. R. 157. also *Mirza Khyrat Ali v. Mirza Syfoollah Khan*, 8 W. R. 130; and *Muthoora Nath Doss v. Raikomul Dossee*, 24 W. R. 278.

(2) L. R., 2 Ind. App. P. C. 154; see