

1896
June 10.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.
SHIB SINGH (PLAINTIFF) v. MUKAT SINGH AND OTHERS (DEFENDANTS).
Civil Procedure Code, sections 312, 320, 588 cl. (16) - Act No. VII of 1888,
sections 30 and 55—Execution of decree—Decree transferred to Col-
lector for execution—Suit by auction-purchaser to confirm sale set aside
by the Collector.

A decree was transferred to the Collector for execution. A sale was held by the Collector under that decree. Subsequently that sale was set aside by the Collector by an order under section 312 of the Code of Civil Procedure. A person who had been an auction-purchaser at the sale so set aside brought a suit in a Civil Court to have the sale restored and confirmed. Held that such a suit would not lie.

Azimuddin v. Baldeo (1) and *Bandi Bibi v. Kalka* (2) referred to and held to be no longer applicable by reason of the changes effected in the law by Act No. VII of 1888, but the judgment of Oldfield, J., in the former case approved. *Madho Prasad v. Hansa Kuar* (3) referred to.

THIS was a suit brought by an auction-purchaser for confirmation of a sale held by a Collector in execution of a decree, transferred to him under section 320 of the Code of Civil Procedure, which sale had been set aside by an order under section 312 of the Code owing to certain alleged irregularities in publishing and conducting it.

The original hearing of the suit was *ex-parte*, the judgment-debtors defendants not having appeared, and a decree was passed confirming the sale. But this decree was set aside on the application of the judgment-debtors.

On the re-trial of suit both the lower Courts agreed in dismissing it upon the ground that there had been irregularities in publishing the sale, which had resulted in substantial injury to the judgment-debtor, and found that the order of the Collector setting aside the sale was right. The question whether a civil suit lay at all under the circumstances was raised in the Court of first instance, which, however, considered itself concluded by the ruling in *Bandi Bibi v. Kalka* (2).

* Second Appeal No. 502 of 1894, from a decree of Babu Ganga Saran, Subordinate Judge of Aligarh, dated the 15th February 1894, confirming a decree of Pandit Bishambar Nath, Munsif of Aligarh, dated the 20th September 1893.

(1) I. L. R., 3 All. 554. (2) I. L. R., 9 All., 602.
(3) I. L. R., 5 All., 314.

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The plaintiff auction-purchaser appealed to the High Court.

Mr. W. K. *Porter* for the appellant.

Pandit *Sundar Lal* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—Shib Singh was the purchaser at an auction sale held by the Collector in execution of a decree, the execution of which had been transferred under section 320 of the Code of Civil Procedure to the Collector. The Collector acting under section 312 passed an order setting aside the sale. Thereupon Shib Singh brought this suit to have the sale confirmed. The first Court dismissed the suit. The Court of first appeal dismissed the appeal. Shib Singh has brought this second appeal.

We were pressed by Mr. *Porter* with the decision of this Court in *Azimuddin v. Baldeo* (1) and he contended that we were bound by that decision to hold that the suit lay. There is no doubt that if the law which was applicable when that decision was passed remained unaltered until this suit was commenced, and further if it was a Civil Court which had made the order setting aside the sale in this case, we should have been bound by the decision upon which Mr. *Porter* has relied. The case in I. L. R., 3 All., 554, is a decision of the Full Bench in which Mr. Justice Oldfield dissented. It is not for us to discuss that Full Bench decision. We may say, however, that the judgment of Mr. Justice Oldfield in that case commends itself to our approval. That decision was followed by a Division Bench of this Court in *Bandi Bibi v. Kalika* (2), which gave no reason for the decision except that the point had been decided by the Full Bench. However, these two cases to which we have referred were decided, the one upon Act No. X of 1877, and the other upon Act No. XIV of 1882 before it was amended by Act No. VII of 1888. Now before the amendment of section 588, clause (16), there was no appeal from an order passed under section 312 setting aside a sale. Clause (16) was amended by section 55 of Act No. VII of 1888, and a right of appeal was given from such an order. Further, in Act

(1) I. L. R., 3 All., 554.

(2) I. L. R., 9 All., 602.

No. X of 1877, and Act No. XIV of 1882 before its amendment in 1888, section 320 consisted of the first two paragraphs which still appear in it, and of those only. By Act No. VII of 1888, section 30, paragraphs 3, 4 and 5 were added to section 320. The third and fourth paragraphs, which were two of the added paragraphs, clearly indicate in our opinion that, when a decree is transferred to the Collector for execution under section 320, the Revenue Court becomes seised of the jurisdiction which temporarily is taken away during the execution of the decree from the Civil Court. By the third paragraph of section 320, orders made by a Collector under section 312 are subject to appeal to and revision by superior revenue authorities if the Local Government makes rules in that behalf. Failing such rules, there appears to be no appeal. It is not necessary for us to decide whether or not a purchaser is given a right of appeal from an order passed by a Collector under section 312 of the Code setting aside a sale. The decree-holder and the judgment-debtor, or the person whose immovable property has been sold, are by the rules which were made and are in force under section 320 given a right of appeal from an order confirming or setting aside a sale of a Collector. It never could have been the intention of the Legislature that there should be an appeal proceeding in a Court of Revenue from an order of a Collector under section 312 and a civil suit proceeding in a Civil Court raising the same question as to the propriety or validity of that order. The result might be that the Court of Revenue in appeal might take one view, and not impossibly the Civil Court might take another view. In our opinion where a jurisdiction is transferred from the Civil Court to the Collector to execute a decree, and where the law makes the Collector's order either final or appealable to higher revenue authorities and not to the Civil Court, the intention of the Legislature is that the order of the Collector shall not be questioned either by appeal or suit in the Civil Court. We presume that if Act No. VII of 1888 had been passed before the two decisions to which we have referred, this Court might have taken a different view of the law from that expressed in those cases.

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The Full Bench decision in *Madho Prasad v. Hansa Kaur* (1) supports the view which we have adopted. We dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Aikman and Mr. Justice Blennerhassett.

SITA RAM AND OTHERS (DEFENDANTS) v. RAM LAL (PLAINTIFF)*.
Landlord and tenant—Zar-i-peshgi lease—Sub-lease by zar-i-peshgi lessee—Default by sub-lessee who lets into possession the original lessor and denies the zar-i-peshgi lessee's title—Suit by zar-i-peshgi lessee for possession in a Civil Court—Form of decree—Civil Procedure Code, sections 263, 264.

Two occupancy tenants granted a *zar-i-peshgi* lease of their occupancy holding to one R. L., for a term of sixteen years, R. L. sub-let the holding for a term slightly less than his own. The sub-lessees made default in payment of rent. R. L. distrained their crops. Thereupon the original lessors intervened claiming the crops as theirs. The question of the distraint having been decided by the Court of Revenue against him, R. L. then brought a suit in a Civil Court asking for ejection of both his lessors and his lessees and to be put into actual possession himself.

Held by the Full Bench (*dissentiente* Blennerhassett, J.) that the plaintiff was precluded by reason of the lease granted by him, the term of which had not expired, from obtaining actual possession, unless the sub-lessees were ejected, which could only be done through the Court of Revenue. But the plaintiff was entitled to a decree declaring his title as *zar-i-peshgi* lessee and putting him into possession of the rents and profits of the holding as *zar-i-peshgi* lessee; the decree for possession to be executed under section 264 of the Code of Civil Procedure.

THIS was a reference to a Full Bench of the whole Court arising out of the following circumstances. Sita Ram and Hardeo defendants Nos. 1 and 2, executed on the 5th June 1889, a *zar-i-peshgi* lease of some 44 bighas 1 biswa of their occupancy holding in favour of Ram Lal, the plaintiff. Ram Lal in his turn let the land held by him under the *zar-i-peshgi* lease for a term

* First Appeal No. 24 of 1896, from an order of Maulvi Siraj-ud-din, Sub-ordinate Judge of Agra, dated the 31st January 1896.