

must make out a fraudulent misrepresentation which he accepted as true and which induced him to enter into the contract, and, further, which caused him damage. The Subordinate Judge, if his attention had been drawn to the decision of the House of Lords to which we have just referred, would no doubt have framed and tried the proper issues of fact. As those issues of fact which we deem necessary to the disposal of the case have not been tried, we must refer under section 566 of the Code of Civil Procedure the following issues for trial by the lower appellate Court :—

1. Was the statement as to the area made by the vendors with an honest belief in its truth, or was it made without belief in its truth, or recklessly by the vendors careless as to whether it was true or false ?

2. Did the vendee-plaintiff in this case conclude the contract of purchase believing that the statement as to the area was correct, and was he induced to complete that contract believing that statement to be correct ?

As it has already been found by the lower appellate Court that the plaintiff did suffer damage to the amount stated, we need refer no issue on this point.

Ten days will be allowed for objections on the return of the findings.

Issues referred.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.

TARA CHAND (PLAINTIFF) *v.* IMDAD HUSAIN AND OTHERS

(DEFENDANTS.)*

Act No. IV of 1882 (Transfer of Property Act), section 99—Civil and Revenue Courts—Jurisdiction—Sale by a Court of Revenue in contravention of section 99—Subsequent suit in a Civil Court based upon rights acquired under that sale.

A Court of Revenue in execution of a decree for rent sold the mortgagor's interest in a certain house, which had been mortgaged together with other property, and the sale was upheld on appeal to the Board of Revenue. Subsequently the auction-purchaser at the sale above referred to sued in a Civil Court for

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* Second Appeal No. 78 of 1894, from a decree of H. P. Mulock, Esq., District Judge of Moradabad, dated the 16th November 1893, confirming a decree of Maulvi Aziz-ul-Rahman, Munsif of Moradabad, dated the 15th April 1893.

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partition of the share purchased by him. *Held* that the co-sharers in the property in question could not dispute the validity of the sale, notwithstanding that the decree and the sale in pursuance thereof were in direct violation of section 99 of Act No. IV of 1882.

THE plaintiff in this case sued for partition and possession of a share in a certain house, on the allegation that he had purchased the same at a sale held in execution of a decree of a Court of Revenue, and that the defendants would neither give him possession nor pay rent.

The principal defendant, namely, the defendant whose share had been sold, resisted the plaintiff's claim upon various pleas, and *inter alia* on the plea that the sale under which the plaintiff had purchased was bad in law, inasmuch as it had been held in contravention of the provisions of section 99 of the Transfer of Property Act, 1882. It appeared that the defendant in question, Muhammad Husain, mortgaged with possession his zamindari property and his share in the house in suit to one Dwarka Das. Dwarka Das then leased the lands mortgaged to him to Muhammad Husain. Muhammad Husain fell into arrears with his rent, and Dwarka Das got a decree against him. In execution of that decree for rent Dwarka Das had the share of the house now in suit, being part of the mortgaged property, put up for sale, and it was sold and purchased by the plaintiff, Tara Chand.

The Court of first instance (Munsif of Moradabad) found that the sale under which the plaintiff purchased was an illegal and void sale, and dismissed the plaintiff's suit.

The plaintiff appealed, and the lower appellate Court (District Judge of Moradabad), on a similar finding, dismissed the plaintiff's appeal.

The plaintiff thereupon appealed to the High Court.

Munshi *Ram Prasad* for the appellant.

Maulvi *Ghulam Muftaba* for the respondents.

EDGE, C. J., and BLENNERHASSETT, J.—This was a suit for partition. The zamindar had mortgaged certain interests in his zamindari and his interest in a house by way of usufructuary

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mortgage. The usufructuary mortgagee granted a lease to the mortgagor, and the mortgagor became his tenant of the mortgaged premises. The mortgagor made default in payment of rent. The mortgagee brought a suit for arrears of rent and obtained a decree under Act No. XII of 1881. He applied to the Court of Revenue to execute that decree by sale of the mortgagor's interest in the house which was included in the mortgage. The mortgagor opposed the application for sale on the ground that section 99 of Act No. IV of 1882 applied. As a matter of fact the mortgagor was quite right: the section did apply. The Court of Revenue, however, was of opinion that the Transfer of Property Act did not apply to Courts of Revenue, and declined to pay any attention to section 99 of that Act. It is hardly necessary to say that section 99 of the Transfer of Property Act is as binding on a Court of Revenue as it is on a Civil Court. It is a section of general application which has been enacted by the Legislature which can pass enactments binding on Courts of Revenue. The judgment-debtor appealed to the Board of Revenue. The Board of Revenue saw no reason for differing from the decision of the lower appellate Court, and dismissed the appeal. The result was that the Court which is given jurisdiction by the Legislature in such a case to execute decrees for arrears of rent under the Rent Act, came to an erroneous decision. That erroneous decision was affirmed by the Court of appeal provided by the Legislature in such cases; and the decision became final between the parties and binding. It is a good example of a result of a Court of Revenue having jurisdiction to decide a question of title or of right. However, the Court of Revenue and the Board had the exclusive jurisdiction in the matter, and the decision of the Court of Revenue is final. The property was sold in contravention of section 99 of the Transfer of Property Act, and this suit is brought by the auction-purchaser to obtain possession of the interest which he purchased in the house.

The suit was brought in the Civil Court. The first Court rightly construed section 99 of the Transfer of Property Act, and rightly held that it applied to a Court of Revenue, and the Munsif

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dismissed the suit. On appeal the District Judge, taking the same view which the Munsif did¹ as to the applicability of section 99 of the Transfer of Property Act, dismissed the appeal. The plaintiff has brought this second appeal.

The position is shortly this. As between the judgment-debtor and the judgment-creditor in the rent suit, the decision of the Court of Revenue is final, namely, that notwithstanding section 99 of the Transfer of Property Act, the judgment-debtor's interest could be lawfully brought to sale in execution of a decree for rent by the mortgagee. The plaintiff purchased in execution of that decree, and neither the judgment-debtor nor the judgment-creditor can dispute the title which he obtained by the purchase. The only question remaining is—can the other co-sharers in the house be allowed to dispute the title of the auction-purchaser, the plaintiff, under these circumstances? The other co-sharers had no interest in the share sold. As between the parties interested in that share and the auction-purchaser the question is concluded by the decisions of the Courts of Revenue: In our opinion the other co-sharers in the house cannot, in this suit for partition, be heard to say that the plaintiff has not got that title by the auction sale which neither the judgment-debtor nor the judgment-creditor could dispute.

We have been referred to *Sathuvayyan v. Muthusami* (1), *Durgayya v. Anantha* (2) and *Vigneswara v. Bapayya* (3). The facts of those cases were not similar to the present.

We allow this appeal with costs in all Courts; and we remand this case under section 562 of the Code of Civil Procedure to the first Court to be disposed of according to law.

The issue raised on the question of *ism farzi* has already been decided and is not open.

Appeal decreed and cause remanded.

(1) I. L. R., 12 Mad., 325.

(2) I. L. R., 14 Mad., 74.

(3) I. L. R., 16 Mad., 436