

Court of Wards under section 9 of the Local Act, and if the sale had been made without the consent of the proprietor otherwise than on the ground set out in the concluding paragraph of section 35, the sale would have been a bad sale and the Civil Court could have entertained a suit to question the power of the Court of Wards to sell. The learned vakil for the appellant has contended very earnestly and said all that could be said on behalf of his clients, but the fact that the estate was taken under the superintendence of the Court of Wards under the provisions of Act No. XIX of 1873 renders his position untenable. The appeal is dismissed with costs.

1907

MOHSAN
SHAH
v.
MAHBUB
LAARI.

Appeal dismissed.

Before Mr. Justice Aikman.

RAM SUKH (PLAINTIFF) v. RAM SAHAI (DEFENDANT).*

Civil Procedure Code, section 316—Execution of decree—Sale in execution—Decree reversed before confirmation of sale.

Held that the title of an auction purchaser at a sale held in execution of a decree does not become absolute if the decree under which the sale took place is reversed at any time before a certificate of sale is granted to the purchaser.

1907
May 14.

IN execution of a decree against one Ram Sukh a house belonging to the judgment-debter was sold by auction and purchased by one Ram Sahai. Before, however, the sale was confirmed, the decree was set aside in appeal. Thereafter Ram Sukh applied to the Court to be allowed to withdraw the purchase money deposited in Court; but the auction purchaser objected to this, and the parties were referred to a Civil Court. Ram Sukh then filed the present suit in which he asked in the alternative either to be given the price deposited in Court or to be restored to possession of the house. The Court of first instance (Munsif of Sambhal) gave the plaintiff a decree for the money. The defendant appealed, and the lower appellate Court (officiating Subordinate Judge of Moradabad) reversed the decree of the Munsif and directed the house to be restored to the plaintiff. The plaintiff appealed to the High Court.

* Second Appeal No. 1270 of 1905, from a decree of Pandit Mohan Lal, Officiating Subordinate Judge, Moradabad, dated the 6th of September 1905, reversing a decree of Babu Sheodharshan Dayal, Munsif of Sambhal, dated the 5th of April 1905.

1907

RAM SUKH
v.
RAM SAHAI.

Munshi *Gobind Prasad*, for the appellant.

Pandit *M. L. Sandal*, for the respondent.

AIKMAN, J.—One Chunni Lal had a simple money decree against the appellant Ram Sukh. In execution of that decree a house belonging to the appellant Ram Sukh was sold, and was purchased by the respondent Ram Sahai, who paid the money into Court. Section 316 of the Code of Civil Procedure provides that the title to the property sold, in a case like this, shall vest in the purchaser from the date of the certificate which is granted to the purchaser under that section, and it contains this important proviso, namely, "that the decree under which the sale took place was still subsisting at that time." I infer from this proviso that even though a sale has become absolute on being confirmed under section 314, the Court may hold its hand and refuse to grant a certificate if before the certificate is granted the decree under which the property was sold is no longer subsisting. In the present case the decree under which the property was sold was reversed on the 19th of March 1904. That was before the sale was confirmed. It appears that no certificate has yet been issued to the auction purchaser, Ram Sahai, and consequently the title to the property sold has not yet vested in him. It also appears that when the decree against him was set aside Ram Sukh applied to be allowed to take out the price of the property, which had been deposited in Court. The purchaser objected to this and said that he should take back the property. The parties were referred to the Civil Court. Thereupon the plaintiff brought the suit out of which this appeal arises, in which he asked that he should be declared entitled to receive from the Court the sale price deposited in Court, or in the alternative that he might be put in possession of the house. The respondent, Ram Sahai, had no objection to the grant of the latter relief, but he objected to the money being taken out of Court. The Court of first instance decreed the first relief asked for by the plaintiff. On appeal the learned Officiating Subordinate Judge, for the reasons set forth in his judgment, held that under the circumstances no title to the house had passed to the purchaser, and that the plaintiff was entitled to get back the house and not the purchase money. The plaintiff comes here in second appeal. In my opinion the view taken by

the Court below is right. It is quite true that a *bond fide* purchaser, who is not himself the decree-holder, does not lose his title to the property by the subsequent reversal of the decree in execution of which he bought. But in the present case the language of section 316 of the Code of Civil Procedure shows that no title had passed to the purchaser. This being so, the decree of the Court below was, in my opinion, the right decree to pass. I therefore dismiss this appeal with costs.

1907

RAM SUKH
v.
RAM SAHAI.

Appeal dismissed.

Before Mr. Justice Aikman and Mr. Justice Griffin.

THAMMAN PANDE (DEFENDANT) v. THE MAHARAJA
OF VIZIANAGRAM (PLAINTIFF).*

1907
May 27.

Act No. XV of 1877 (Indian Limitation Act), schedule II, Article 144—Limitation—Adverse possession—Lease—Possession derived from a lessee not necessarily adverse as against the lessor.

Held that possession acquired during the continuance of a lease will not ordinarily be adverse possession as against the lessor until at any rate such time as the lessor becomes entitled to possession. The principle of *Muhammad Husain v. Mul Chand* (1) and *Sharai Sundari Dabia v. Bobo Pershad Khan Chowdhuri* (2), *Womes Chunder Goopto v. Raj Narain Roy* (3), *Krishna Gobind Dhur v. Hari Churn Dhur* (4), *Sheo Sohye Roy v. Luchmashur Singh* (5) and *Gunga Kumar Mitter v. Asutosh Gossami* (6) followed. *Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee* (7) referred to. *Lekharaj Roy v. The Court of Wards on behalf of the Rajah of Durbhangah* (8), *Brindaban Chunder Sircar Chowdhry v. Bhoopal Chunder Biswas* (9), *Prosunomoyi Dasi v. Kali Das Roy* (10) and *Gobinda Nath Shaha Chowdhry v. Surja Kantha Lahiri* (11), not followed.

THE facts of this case are as follows:—

The plaintiff leased the village of Saheli to one Girish Chandra from 1297 to 1309 Fasli. During the continuance of the lease the defendant in some manner got possession of 8 plots of land in the village, from which, some two years before the expiry of the lease, the plaintiff brought the present suit to eject him. The

* Second Appeal No. 753 of 1905, from a decree of Maulvi Syed Zein-ul-Abdin, Subordinate Judge of Jaunpur, dated the 9th of May 1905, modifying a decree of Maulvi Shams-ud-din Khan, Munsif of Jaunpur, dated the 3rd of October 1904.

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| (1) (1904) I. L. R., 27 All., 395. | (6) (1896) I. L. R., 23 Calc., 868. |
| (2) (1886) I. L. R., 13 Calc., 101. | (7) (1878) I. L. R., 4 Calc., 327. |
| (3) (1868) 10 W. R., 15. | (8) (1870) 14 W. R., 395. |
| (4) (1882) I. L. R., 9 Calc., 367. | (9) (1872) 17 W. R., 377. |
| (5) (1884) I. L. R., 10 Calc., 577. | (10) (1881) 9 C. L. R., 347. |
| (11) (1899) I. L. R., 26 Calc., 460. | |