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closed end than the plaintiff's house. There are also shops near the open end. This lane has been lighted and drained and is swept by the Municipality. When the Tonochy property was sold, the portion which forms this lane was not sold and has been freely used by the public for at least thirty years. Taking all the facts into consideration, we think the conclusion to be drawn from them when viewed together is that the lane is a public street as defined in the Act. This being so, the Municipality were acting within their rights in passing the order complained of. For the above reasons we allow the appeal with costs, and, setting aside the decree of the lower appellate Court with costs, restore that of the Court of first instance.

Appeal decreed.

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December 6.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.

SHEO NARAIN (DEFENDANT) v. NUR MUHAMMAD AND ANOTHER
(PLAINTIFFS). *

Civil Procedure Code, section 244—Execution of decree—Purchase at auction sale by decree-holder—Suit by decree-holder to obtain possession of property so purchased.

Where the decree-holder himself purchases property at auction sale in execution of his own decree, but fails to obtain possession, his remedy is by application under section 244 of the Code of Civil Procedure: he cannot bring a separate suit for possession. *Seru Mohan Bania v. Bhagoban Din Pande* (1) and *Kishori Mohun Roy Chowdhry v. Chunder Nath Pal* (2) distinguished. *Madhusudan Das v. Gobinda Pria Chowdhurani* (3), *Kattayat Pathumayi v. Raman Menon* (4) and *Kalian Singh v. Thakur Das* (5) followed. *Prosunno Coomar Sanyal v. Kali Das Sanyal* (6) referred to.

THE predecessors in title of the plaintiffs were purchasers of a 4-anna zamindari share owned by one Param in execution of a simple money decree held by one of them. The purchase was made on the 20th of April 1895.

In February 1902 the plaintiffs applied under section 318 to be put into possession of the property purchased, but their application was rejected on the 1st of March 1902 as beyond time.

* Appeal No. 36 of 1907 under section 10 of the Letters Patent, from the judgment of Aikman, J., in S. A. No. 521 of 1905, dated the 5th of April 1907.

(1) (1883) I. L. R., 9 Calc., 602.

(2) (1887) I. L. R., 14 Calc., 644.

(3) (1899) I. L. R., 27 Calc., 34.

(4) (1902) I. L. R., 26 Mad., 740.

(5) Weekly Notes, 1906, p. 87.

(6) (1892) L. R., 19 I. A., 169.

Thereafter, on the 18th of July 1904, the plaintiffs instituted the present suit to recover possession of the property purchased by their predecessor in title on the 20th April 1895, as above stated. The Court of first instance (Munsif of Lalitpur) dismissed the plaintiffs' suit. On appeal, however, the District Judge of Jhansi reversed the Munsif's decree, allowed the appeal, and decreed the plaintiffs' claim. The defendant appealed to the High Court. The appeal came on for hearing before a single Judge of the Court and was dismissed—*Cf. Weekly Notes, 1907, p. 131.* The defendant thereupon appealed under section 10 of the Letters Patent.

Mr. G. W. Dillon and the Hon'ble Pandit Madan Mohan Malaviya, for the appellants.

The Hon'ble Pandit Sunder Lal, for the respondent.

STANLEY, C.J., and BURKITT, J.—The main question raised in this appeal is whether a claim for possession of property purchased by a decree-holder in execution of his own decree can be enforced by a separate suit, or whether such a suit is barred by the provisions of section 244 of the Code of Civil Procedure. The property of which possession is sought to be recovered falls a little short of a 4-anna undivided share of a certain village which was purchased by the decree-holders on the 20th of April 1895. That property is in the possession of the appellant Sheo Narain under a deed of gift from the widow of the judgment-debtor. No steps were taken by the purchaser to obtain possession until the month of February 1902, that is, nearly seven years after the date of the purchase, when he applied to the Court for possession under section 318 of the Code. That application was rejected as being barred by limitation on the 1st of November 1902. The present suit was instituted in 1904 for a declaration that the share of the property in question was not subject to a mortgage which had been set up in a prior suit by Sheo Narain and also for possession of it as unincumbered property.

The Court of first instance dismissed the plaintiffs' claim, holding that the share in question was not unincumbered and relying in support of his decision upon the memorandum of bids which was prepared by an Amin in the office of the Deputy Collector, from which it appeared that the property sold was

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subject to a mortgage for a sum of Rs. 148. On appeal the decision of the Court of first instance was reversed, and thereupon a second appeal was preferred to this Court. The learned Judge before whom the appeal came upheld the decision of the lower appellate Court, holding that there was no force in the contention raised on behalf of the appellant in that Court, that the suit was barred by the provisions of section 244 of the Civil Procedure Code. He observes in the course of his judgment:—

“The mere fact that the auction purchasers or their representatives failed to apply within time to be put in possession under section 318 of the Code of Civil Procedure does not deprive them of their right to bring a regular suit” and then quotes as an authority for this view the case of *Seru Mohan Bania v. Bhagoban Din Pande* (1) and *Kishori Mohan Roy Chowdhry v. Chunder Nath Pal* (2). In neither of these cases was the purchaser the decree-holder, as was the fact in the case before us. But there is no doubt that according to some early rulings the decision of the learned Judge would have been correct. Lately, however, several cases have come before this and the other High Courts in which the early rulings have not been followed. The earliest of these to which we need refer is the case of *Madhusudan Das v. Gobinda Pria Chowdhurani* (3), in which it was held by Macpherson and Stevens, JJ., that proceedings for the delivery of possession to an auction purchaser, who was also the decree-holder, after sale in execution of her own decree, were proceedings in execution of the decree, and that when application for possession was resisted by the legal representative of the judgment-debtor on the allegation that portions of the property belonged to him and not to the judgment-debtor, the question raised came under section 244 and must be decided under that section and not by a separate suit. The next case to which we would refer is that of *Kattayat Pathumayi v. Raman Menon* (4), in which a similar view was taken, it being held that proceedings taken by an auction purchaser to obtain possession of property purchased by him at a sale in execution of his own decree related to the execution, discharge or satisfaction of the decree within the

(1) (1883) I. L. R., 9 Calc., 602.

(3) (1899) I. L. R., 27 Calc., 34.

(2) (1887) I. L. R. 14 Calc., 644.

(4) (1902) I. L. R., 26 Mad., 740.

meaning of section 244 and that a separate suit for possession was not maintainable. The question again came before this Bench in the case of *Kalyan Singh v. Thakur Das* (1), in which the question was carefully considered and the decision of the Calcutta and Madras High Courts was followed. So far therefore as we are concerned the question is concluded by authority. We do not think that we are unduly extending the scope of section 244, and we say this with the more confidence, in view of the observations of their Lordships of the Privy Council in recent cases as regards the object and meaning of that section, in which they express approval of the facts that the Courts in India have not placed any narrow construction on its language:—see *Prosunno Coomar Sanyal v. Kabi Das Sanyal* (2).

For these reasons we must allow the appeal and dismiss the suit with costs in all Courts.

Appeal decreed.

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1907
December 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

MAHADEI (PLAINTIFF) v. BALDEO (DEFENDANT).*

Hindu law—Hindu widow—Effect of compromise entered into by a Hindu female with a limited estate.

Held that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court; the reversioners can only be bound by a decree made after a full contest in a *bona fide* litigation. *Gobind Krishna Narain v. Khunni Lal* (3) followed.

THIS was a suit to recover possession of certain zamindari property of small value, and was brought under the following circumstances. The property originally belonged to one Dayal, who died leaving a widow Musammat Anandi, a son Suraj Din and a daughter Sukhdei. Suraj Din succeeded to the property. On Suraj Din's death his widow, Musammat Batasia, took

* Appeal No. 35 of 1907 under section 10 of the Letters Patent from the judgment of Aikman, J., in Second Appeal No. 228 of 1906, dated the 16th of May 1907.

(1) Weekly Notes, 1906, p. 87. (2) (1902) 19 I. A., 169; s. C., I. L. R., 19 Calc., 683.

(3) (1907) I. L. R., 29 All., 487.