

APPELLATE CIVIL.

1907
December 6.

Before Mr. Justice Sir George Knox and Mr. Justice Aikman.
MUNICIPAL BOARD OF BULANDSHAHR (DEFENDANT) v. DAKKHAN
LAL (PLAINTIFF).*

*Act (Local) No. 1 of 1900 (United Provinces Municipalities Act), section 3
(4)—Definition—"Street."*

Held that a lane which, though at one time private property, had been for upwards of thirty years used by the public generally and had been lighted, drained and swept by the Municipality, was a "street" within the meaning of section 3 of the Municipalities Act, 1900, and was not the less a street because it happened to be a cul-de-sac.

THE facts of this case are fully stated in the judgment of the Court.

Maulvi *Ghulam Mujtaba* and Babu *Lalit Mohan Banerji*, for the appellant.

Lala Girdhari Lal Agarwala, for the respondent.

KNOX and AIKMAN, JJ.—The plaintiff, Dakkhan Lal, who is respondent to this second appeal, was the owner of a house which is situate in one of the inner lanes in the town of Bulandshahr. One end of the lane is closed, in other words the lane is a cul-de-sac. In front of his house he erected some cattle troughs and a thatched shed. Complaint was made by some of the residents of the mohalla living opposite the plaintiff's house. This complaint was made to the Municipal Board, and they served the plaintiff with a notice to remove the constructions which he had made, on the ground that they caused inconvenience to the people of the mohalla and also injuriously affected the sanitation of the place. The plaintiff filed objections, which were overruled by the Board, and he was ordered peremptorily to remove the troughs and the thatch. He failed to comply with this order, was prosecuted, admitted that he was wrong, was fined, and he himself pulled down the erections that he had made. He then instituted the suit out of which this appeal has arisen. He prayed for a declaration that the land upon which he had built was his own land and for an injunction to restrain the Municipality from interfering any further with it. He also prayed that the Municipality should

* Second Appeal No. 349 of 1906, from a decree of Girraj Kishore Dat, Additional Subordinate Judge of Aligarh, dated the 1st of February 1906, modifying a decree of Mubarak Hussain, Munsif of Bulandshahr, dated the 24th of July 1905.

be ordered to rebuild the erections or to pay damages. The Court of first instance came to the conclusion that the land upon which the plaintiff had built, was his own private property and that he had not by the building that he had made encroached upon any street. It therefore held that the provisions of section 88, sub-section (1) of the North-Western Provinces and Oudh Municipalities Act, I of 1900, did not apply and that the Municipality was not justified under that section in the order which they had issued, but he held that they were in issuing the order justified by section 87 of the same Act. Whilst therefore he gave the plaintiff the declaration he asked for, he dismissed the rest of the claim. The plaintiff appealed. The learned Subordinate Judge allowed the appeal and decreed the plaintiff's claim in full. The Municipal Board has come here in second appeal.

The case has been well argued before us by the learned vakils on both sides. They have taken us through the judgments and cited various authorities applicable to the question at issue. For the appellants it is contended that, accepting the findings of fact arrived at by the Court below, the conclusion of the learned Subordinate Judge to the effect that the lane was not a street as defined by the Municipalities Act was wrong. The word "street" as used in the Act, is defined in clause (4), section 3, as follows:— "Street means any street, road, thoroughfare, passage or place over which the public have a right of way, and includes the footway and surface drains of any such street, and any bridge, culvert or causeway forming part of any such street."

We have to consider whether on the facts found the place where the plaintiff made his constructions, is a place abutting or adjoining a street within the meaning of this Act. We would first observe that the fact that the lane is a cul-de-sac does not prevent it from coming within definition of street, so long as the public have a right of way over it. It appears from the evidence that upwards of thirty years ago a Deputy Collector named Tonochy was the owner of this property and that he erected houses and shops thereon. After his death the houses and shops together with some land were sold by auction to different persons. The map shows that these houses and shops are situate on both sides of the lane, which is closed at the north end, and that there are shops in the lane nearer the

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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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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.