

and if the question is decided in favour of the defendant, dismiss the suit. That section has no application to the present case, for the simple reason that the defendant Ram Das did not in this case plead that the relation of landlord and tenant did not subsist between the plaintiff and himself; and he has not paid to any body any portion of the rent of the holding which is the subject matter of the suit. It appears to us therefore that there is no substance in the question of principle which has been raised and that the appeal in this respect has no force. As regards the important question of fact as to whether or not the plaintiff is entitled to the few annas which is claimed in the appeal, we have read with very great care the judgements of the lower court and having given our best consideration to those judgements we see no reason to differ from the conclusion at which the learned District Judge arrived. We therefore dismiss the appeal with costs.

1910

SHEO DIHAL
SINGHv.
BADRI
NARAIN
SINGH.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

SHIAM LAL AND OTHERS (DEFENDANTS) v. NATHE LAL (PLAINTIFF).*

Civil Procedure Code (1882), section 316—Execution of decrees—Purchase at auction sale—Date of accrual of auction purchaser's title.

Held that under the Code of Civil Procedure, 1882, the title of a purchaser of immovable property at a sale in execution of a decree to mesne profits arising therefrom does not accrue until the date of the confirmation of such sale. *Amir Kazim v. Darbari Mal* (1) and *Prem Chand Faul v. Purnima Dasi* (2) followed.

CERTAIN shops and premises of the firm of Thakur Das Dhani Ram were sold on the 29th June, 1907, in execution of a decree. The sale was confirmed on the 22nd August, 1908. A sum of Rs. 700 alleged to be due by way of arrears of rent was sold in execution of another decree against Thakur Das Dhani Ram and purchased by the plaintiff Nathe Lal on the 18th December, 1908. The plaintiff sued to recover arrears of rent from the tenants, but was met by the defence that the person entitled was the purchaser at the sale held on the 29th of June, 1907, and not the plaintiff.

1910
June 3.

* Second Appeal No. 986 of 1909 from a decree of Muhammad Siraj-ud-din, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge, of Cawnpore, dated the 13th of July, 1909, confirming a decree of Pirthi Nath, Munsif of Cawnpore, dated the 28th of April, 1909.

(1) (1903) I. L. R., 24 All., 475, (2) (1833) I. L. R., 15 Cal., 546.

1910

SRIAM LAL
v.
NATHE LAL.

The court below decided that the purchaser of the premises had no interest till confirmation of sale and gave a decree in favour of the plaintiff. The defendants appealed.

Mr. *M. L. Agarwala*, for the appellants :—

The question would not arise under the present Code of Civil Procedure. Section 65 would meet the requirements of the case. But the new Code had not come into operation at the time. Section 316 of the old Code declared that title did not vest in purchaser until date of confirmation of sale. But even if the property did not vest in the first purchaser, he would still have an inchoate title to it.

Munshi Gulzari Lal, for the respondents relied on *Amir Kazim v. Darbari Mal* (1) and section 36 of the Transfer of Property Act.

STANLEY, C. J., and GRIFFIN, J.:—This appeal arises out of a suit for recovery of arrears of rent. A shop and premises belonged to the firm of Thakur Das and Dhani Ram. This shop and premises were sold by the Court in execution of a decree on the 29th of June, 1907, and purchased by Jaggi Lal. The sale was not confirmed until the 22nd of August, 1908. Prior to the 22nd of August, 1908, rents of tenants fell into arrear and in the aggregate a sum of Rs. 700 was due for such arrears on that date. In execution of a decree obtained against Thakur Das and Dhani Ram these arrears were sold on the 18th of December, 1908, and were purchased by the plaintiff. He instituted the suit out of which this appeal has arisen for recovery of these arrears. The defence set up by the defendants was that the plaintiff was not entitled to them, but that the purchaser under the purchase of the 29th of June, 1907, was so entitled.

Both the courts below gave a decree to the plaintiff.

This second appeal was then preferred, and the contention of the learned counsel for the appellants is that Jaggi Lal by virtue of his purchase became entitled to the rent as from the 29th of June, 1907, the date of his purchase, notwithstanding that the sale to him was not confirmed until the 22nd of August, 1908. We are unable to accede to this contention. The question is disposed of by section 316 of the former Code of Civil Procedure,

which was in force at the time of the sale. That section provides for the granting by the court of a sale certificate, and declares that, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before. We may here point out that the law has been modified by the present Code of Civil Procedure. Section 65 of the present Code provides that where immovable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property was sold and not from the time when the sale becomes absolute. In view of the provisions of the former Code, to which we have referred, it appears to us that this appeal must fail. In the case of *Amir Kazim v. Darbari dal* (1) it was decided by a Bench of this Court of which one of us was a member, that when immovable property is sold in execution of a decree the title of the auction purchaser to mesne profits or to possession does not accrue until the sale has been confirmed. In that case the court followed the authority of several other cases; in one of which, *Prem Chand Paul v. Purnima Dasi* (2), the contention was raised that though under section 316 property does not vest in the purchaser until the date of the confirmation of the sale, yet this only applies as between the parties to the suit and persons claiming through or under them and does not apply to other parties. This contention was in that case repelled, and, we think, rightly so. For these reasons the appeal fails and is dismissed with costs.

1910
 SHIAM LAL
 v.
 NATEE LAL.

Appeal dismissed.

(1) (1902) I. L. R., 25 All., 475.

(2) (1898) I. L. R., 15 Calc., 546.