

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir George Knox.

1910
July 6.

HASAN ALI (PLAINTIFF) v. MIAN JAN KHAN AND ANOTHER (DEFENDANTS).*
Pre-emption—Claim of pre-emptor based on purchase by him of another share in the same mahal—Claim made before confirmation of sale in plaintiff's favour—Civil Procedure Code, section 316.

Held, with reference to section 316 of the Code of Civil Procedure, 1882, that a purchaser at auction sale in execution of a decree of a share in zamindari property does not become a co-sharer in the mahal in which such property is situate until the sale has been confirmed in his favour.

THE facts of this case were as follows :—

The plaintiff appellant purchased a share in a village on the 20th June, 1907, at an auction sale. The sale was confirmed on the 24th July, 1907. On the 23rd July, 1907, another share in the village was sold by a private sale to one Muhammad Taki by the respondent. The plaintiff sued for pre-emption with respect to this latter property as a co-sharer in the village by virtue of the former sale. Mutation of names had not been effected in the interval between the sale of the 20th June and its confirmation on the 24th July, 1907. The courts below dismissed the suit. The plaintiff appealed to the High Court.

The case came up for hearing before KARAMAT HUSAIN, J., who referred it to a Bench of two Judges by the following order:

“The suit out of which this appeal arose was for pre-emption on the basis of a *wajib-ul-arsz*. The pre-emptor, on the 20th of June, 1907, purchased a share which was sold by auction. That sale was confirmed on the 24th of July, 1907. The property which the pre-emptor sought to pre-empt was sold under a sale deed of the 23rd of July, 1907. The case for the pre-emptor was that he became a co-sharer on the date of the auction sale, that is the 20th of June, 1907, and that therefore he was a co-sharer for the purposes of pre-emption on the 23rd of July, 1907, when the property, the subject matter of the suit, was sold to the defendant vendee. The case for the defendant vendee was that the pre-emptor did not become a co-sharer until the confirmation of the sale on the 24th of July, 1907. Both the courts below accepted the contention of the defendant and dismissed the plaintiff's claim. In second appeal by the plaintiff it is contended by his learned advocate that the ownership of the property purchased at an auction sale vests in the purchaser on the date of that sale, and that being the case, the pre-emptor is entitled to succeed. In support of this contention reliance is placed on the following ruling, namely, Second Appeal No. 194 of 1908, decided by a single Judge of this Court on the 6th of April, 1909, which in

* Second Appeal No. 728 of 1909 from a decree of Ram Autar Pande, District Judge of Azamgarh, dated the 30th of April, 1909, confirming a decree of Pratap Singh, City Munsif of Azamgarh, dated the 16th of November 1908.

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very clear terms lays down that the ownership of a property sold by auction passes to the vendee on the date of the auction sale. In addition to that ruling the learned advocate relies on *Jagannath v. Baldeo* (1), *Chiddo v. Piari Lal* (2), *Bhryub Chunder Bundopadhya v. Soudamani Dabee* (3), *Chatraput Singh v. Grindra Chunder Roy* (4), *Durga Narain Sen v. Baney Madhub Mazoomdar* (5), *Dagdu v. Panchamsing Gangaram* (6) and *Musammal Bukuns Kowur v. Lalla Bukoorees Lall* (7). The learned vakil for the respondents on the other hand contends that under section 816 of the old Code of Civil Procedure of 1882 the property vests in the auction purchaser on the date of the confirmation of the sale and not before. In support of this contention he relies on *Amir Kazim v. Darbari Mal* (8) which fully supports him. In addition to that he also relies on *Sheo Narain v. Hira* (9), *Gobind Ram v. Tulsi Ram* (10) and *Prem Chand Pal v. Purnima Dasi* (11). He further says that the rulings in *Naigar Timapa v. Bhaskar Parmaya* (12), *Banke Lal v. Jagat Narain* (13), *Karuna Moyi Banerjee v. Surendra Nath Mukerjee* (14) and *Harkisandas Narandas v. Bai Iokha* (15) help him in a way. Personally I am of opinion that the date of the passing of ownership to an auction purchaser ought to be the date of the auction sale, inasmuch as all the ingredients necessary to complete the sale come into existence on that date. But as there is a conflict of authority in this Court on this point, which will appear from comparing Second Appeal No. 194 of 1908, decided on the 6th of April, 1909, with the case reported in I. L. R., 24 All., 475, I deem it desirable that this point be considered by a Bench of two Judges. I order accordingly."

The case then came up for hearing before STANLEY, C. J. and KNOX, J.

Mr. Abdul Raouf for the appellant cited, *Dagdu v. Pancham Singh Gangaram* (6) and *Chiddo v. Piari Lal* (2):

Maulvi Muhammad Ishaq, for the respondent, relied on *Amir Kazim v. Darbari Mal* (8) and *Shiam Lal v. Nathi Lal* (16).

STANLEY, C. J., and KNOX, J.—For the purposes of this second appeal it is necessary to note that the appellant, Hasan Ali, purchased a share in a certain mahal at an auction sale on the 20th of June, 1907. The sale did not become absolute until the 24th of July, 1907. On the 23rd of July, 1907, one Mianjan Khan, a share-holder in the same mahal, sold his share by private

- (1) (1883) I. L. R., 5 All., 305.
- (2) (1896) I. L. R., 19 All., 188.
- (3) (1876) I. L. R., 2 Calc., 141.
- (4) (1880) I. L. R., 6 Calc., 330.
- (5) (1881) I. L. R., 7 Calc., 190, 307.
- (6) (1892) I. L. R., 17 Bom., 375.
- (7) (1872) 14 Moo I. A., 496.
- (8) (1902) I. L. R., 24 All., 475.

- (9) (1885) I. L. R. 7 All., 535.
- (10) (1887) Weekly Notes, 1887, p. 217.
- (11) (1888) I. L. R., 15 Calc., 546.
- (12) (1886) I. L. R., 10 Bom., 444.
- (13) (1900) I. L. R., 22 All., 168.
- (14) (1898) I. L. R., 26 Calc., 176.
- (15) (1879) I. L. R., 4 Bom., 155.
- (16) (1910) 7 A. L. J., 81.

sale to one Muhammad Taqi. The present appellant has brought the suit, out of which this appeal has arisen, to enforce under the *wajib-ul-arz* his right to pre-empt the share sold by Mianjan Khan to Muhammad Taqi. Both the courts below dismissed the claim, on the ground that the plaintiff was not a share-holder in the property, in respect of which he claims the right to pre-empt, at the time when the share was sold, namely, the 23rd of July, 1907.

In appeal to this court it was contended that the appellant acquired his title from the date of sale and not from the date of confirmation of the sale. Looking to the terms of section 316 of the Code of Civil Procedure, of 1882, which was the law governing the matter at the time the suit was brought, we have no doubt that the view taken by the courts below was the right view. The plaintiff did not become *hissedar* of the mahal until the date when the sale became absolute, and his right to pre-emption could not arise until the sale had been confirmed in his favour. We may point out that by the present Code of Civil Procedure, section 65, the law has been altered in this respect. Some misapprehension appears to us to prevail as to the meaning of the words used in section 316, viz., "So far as regards the parties claiming through or under them." In *Dagdu v. Pancham Singh Gangaram* (1), TELANG, J., treats these words as though they meant that the court purported to convey an absolute title to the purchaser. But a court acting under section 316 does not guarantee title; all that it does is to convey the right, title and interest in the property of the parties to the suit before it. So far as these parties are concerned it guarantees that the judgment-debtor shall not recover back the property sold, and that from the date entered in the certificate the purchaser becomes entitled to whatever interest the judgment-debtor was possessed of on the date when the sale was held. We think that the words mentioned above were used to preclude any suggestion that the interests of third parties were affected by the certificate that the title to the property sold has vested in the purchaser. The appeal is dismissed with costs.

Appeal dismissed.

(1) (1892) I. L. R., 17 Bom., 875.

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