

APPELLATE CIVIL.

1915
November, 4.

Before Justice Sir George Knox and Mr. Justice Muhammad Rafiq.
SAKHAWAT ALI SHAH (DEFENDANT) v. MUHAMMAD ABDUL
KARIM KHAN (PLAINTIFF).*

*Execution of decrees—Sale of zamindari rights—Whether buildings
pass with the zamindari or not.*

The doctrine that the sale by auction of a zamindari share includes also buildings situated within the zamindari, is only applicable in the absence of evidence indicating an intention to exclude such buildings from the sale. *Abu Hasan v. Ramzan Ali* (1) distinguished.

THE facts of this case were as follows :—

Several persons obtained decrees against one Syed Haidar Shah, who was one of the zamindars of the village Khanpur. In execution of the decree of one Lachhmi Narayan the zamindari share of Syed Haidar Shah was sold and purchased by the plaintiff respondent. In execution of another decree obtained by one Lakkhi Mal against the same Haidar Shah the property called the *kila*, situate in Khanpur, was sold and purchased by the defendant appellant. The plaintiff respondent objected to the attachment and sale of the said *kila* in execution of the decree of Lakkhi Mal, but his objection was disallowed. He then brought the suit out of which this appeal has arisen for a declaration that by virtue of his purchase at auction sale he had become the owner of the share of Haidar Shah in the *kila* situate in Khanpur. The defendant appellant resisted the claim on the ground that all that the plaintiff respondent had purchased at the auction sale was the zamindari share of Haidar Shah. The objection of the appellant was disallowed by the lower courts and the claim decreed.

The defendant appealed to the High Court.

Dr. S. M. Sulaiman and Maulvi Iqbal Ahmad, for the appellant.

Maulvi Shafi-uz-zaman, for the respondent.

MUHAMMAD RAFIQ, J.—The dispute between the parties to this appeal is between two rival purchasers at auction sales. It appears

* Second Appeal No. 962 of 1914, from a decree of A. W. R. Cole, First Additional Judge of Aligarh, dated the 1st of April, 1914, confirming a decree of Banke Bahari Lal, Additional Subordinate Judge of Aligarh, dated the 9th of December, 1912.

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that several persons obtained decrees against one Syed Haidar Shah, who was one of the zamindars of the village Khanpur. In execution of the decree of one Lachhmi Narayan the zamindari share of Syed Haidar Shah was sold and purchased by the plaintiff respondent. In execution of another decree obtained by one Lakkhi Mal against the same Haidar Shah the property called the *kila*, situate in Khanpur, was sold and purchased by the defendant appellant. The plaintiff respondent objected to the attachment and sale of the said *kila* in execution of the decree of Lakkhi Mal, but his objection was disallowed. He then brought the suit out of which this appeal has arisen for a declaration that the plaintiff respondent by virtue of his purchase at auction sale is the owner of the share of Haidar Shah in the *kila* situate in Khanpur. The defendant appellant resisted the claim on the ground that all that the plaintiff respondent had purchased at the auction sale was the zamindari share of Haidar Shah. The objection of the appellant was disallowed by the lower courts and the claim decreed. In appeal the defendant repeats his plea and contends that all that was sold to and purchased by the plaintiff respondent at the auction sale of the 21st of March, 1910, was the zamindari share of Haidar Shah in Khanpur and that his interest in the *kila* was expressly excluded from the sale. The courts below have relied upon the ruling in *Abu Hasan v. Ramzan Ali* (1). The facts of that case were that the rights and interests of a zamindar in a certain zamindari village were sold in execution of a decree. At the time of the sale a certain building stood on the property of the judgement-debtor, i. e. in the village that was sold. The question was whether the sale of the zamindari included the sale of the building also. It was held that, in the absence of evidence showing that the building was excluded from the sale, the sale of the rights and interests in the zamindari included the sale of the building also. The principle of the case of *Abu Hasan v. Ramzan Ali* (1) cannot be applied to the present case for the reason that there is evidence upon the record to show that the sale of the rights and interests of Haidar Shah in Khanpur did not include his interest in the *kila*. The inventory of the property to be sold, filed by Lachhmi

(1) (1882) I L. R. 4 All. 381.

Narayan with his application for execution of decree mentioned nine lots of property, the first of which was the zamindari share of Haidar Shah and the ninth the *kila* situate in Khanpur. It was in accordance with this application of the decree-holder that the zamindari share only of Haidar Shah was brought to sale. The order of attachment and the order of *dakhil dihani* were drawn up in accordance with the inventory filed by the decree-holder, vide papers Nos. 18C., 17D., 131, 141, 153. These documents show that the sale of the 21st of March, 1910, did not pass the interest of Haidar Shah in the *kila* to the plaintiff respondent. I would therefore allow the appeal.

KNOX, J.—I fully agree with my learned brother. Neither the precedent *Abu Hasan v. Ramzan Ali* (1) nor that of *Banke Lal v. Jagat Narayan* (2) is a safe guide in the present case. In the properties which were put to sale, the zamindari share without any specification was sold in the former and in the latter the sale notification distinctly described the property sold as being twenty biswas with gardens belonging to Ram Sarup and Piari Lal. The respondent cannot show in this case the sale notification. This is unfortunate, and, as it was one of the documents upon which his claim rests, if it had been in his favour he should have taken pains to have it produced and placed before us. The *dakhilnama* and the sale certificate upon which he relies are vague in their terms. Even if we take them as they stand, they do not show that the *kila* was sold. The lower courts should have seen to the production of this document. The sale notification is a most important document, as I have repeatedly pointed out in several of my judgements, when a court wishes to find out what was sold. I do not think that the lower courts were justified in arriving at the finding at which they did.

BY THE COURT.—The order of the Court is that this appeal is decreed with costs.

Appeal decreed.

(1) (1882) I. L. R., 4 All., 381.

(2) (1900) I. L. R., 22 All., 168.

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