

followed. I would allow the appeal and restore the decree of the court below.

BANERJI, J.—I am of the same opinion. I expressed my views on the point in the case of *Mangli Prasad v. Debi Din* (1). In the present case section 319 of the Code of Civil Procedure of 1882, applied, and therefore the formal possession which was delivered was in compliance with law. The nature of the property was such that actual possession could not be delivered in respect of it. Therefore from the date of the delivery of formal possession a fresh start for the computation of limitation was obtained by the auction-purchaser. I agree in the order proposed.

BY THE COURT.—We allow the appeal, set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate court with costs of both hearings in this Court.

Appeal decreed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

NANDI (PLAINTIFF) v. SARUP LAL AND ANOTHER (DEFENDANTS).*

Hindu Law—Hindu widow—Sale of husband's property by one of two widows—Right of succession of the other—Purchaser not entitled to refund of money spent on improvements.

A Hindu died leaving two widows. The widows, as a matter of convenience, divided the property of their deceased husband between them. One of the widows sold a house which had fallen to her share. She then died, and her co-widow sued to recover possession of the house. *Held* that the purchaser could not claim a refund of money spent in improving the property so purchased.

THE facts of this case were as follows :—

Musammat Nandi and Musammat Bakhti were co-widows. They partitioned their husband's property among themselves for separate enjoyment. A certain house fell to the share of Musammat Bakhti. She sold it to one Sarup Lal. On the death of Musammat Bakhti, Musammat Nandi brought a suit for recovery of possession of the house from Sarup Lal on the ground

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* First Appeal No. 162 of 1916, from an order of Banke Bihari Lal, District Judge of Meerut, dated the 18th of September, 1916.

(1) (1897) I. L. R., 19 All., 499.

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that the transfer to him by Musammat Bakhti could hold good only during the latter's life-time. The defendant pleaded that the plaintiff was not entitled to recover possession without paying him compensation for the extensive and expensive improvements which had been made by him on the property. The court of first instance held that the improvements had not been made with the defendant's money and decreed the suit without payment of any compensation. The lower appellate court found that the improvements had been made by the defendant with his own money. That court decreed the suit for possession on condition of the plaintiff paying compensation to the defendant and remanded the suit to the first court for determination of the amount of the compensation to be paid. The plaintiff appealed to the High Court from the order of remand.

Pandit *Narmadeshwar Prasad Upadhyaya*, (for Dr. *Surendro Nath Sen*), for the appellant :—

The defendant who was a transferee from a Hindu widow must, in law, be deemed to have known very well that he was purchasing a title limited to the widow's life-time. If, under these circumstances, he chose to build costly constructions, he did so at his own risk. He is not entitled to claim any compensation. In a suit to recover possession from the transferee of a life estate held under the Hindu Law, the defence of compensation and acquiescence can never be a good plea.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents :—

The plaintiff was fully aware all the time that the defendant was spending large sums of money on making improvements to the property and that he was acting under a *bona fide* misconception as to the extent of his title. The plaintiff never objected or interfered and quietly allowed the defendant to incur considerable expenditure under a *bona fide* mistake. Her silence and acquiescence misled the defendant, and she is not entitled, in equity, to get back the house without paying for the improvements made by the defendant.

Pandit *Narmadeshwar Prasad Upadhyaya*, was not heard in reply.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit for possession of a house. It appears that the house

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originally belonged to Tara Chand, who died leaving two widows and no male issue. The name of one of the widows was Musammat Bakhti. The name of the other widow was Musammat Nandi, the plaintiff. These two ladies made a partition of Tara Chand's property as between themselves. The house in question fell to the lot of Bakhti. Bakhti executed a sale-deed of the house to the defendant on the 29th of April, 1898. Bakhti has now died and the plaintiff has brought this suit to recover possession of the house. The case has come right up to this Court on a previous occasion, but finally the court of first instance found that there was no legal necessity for the sale made by Musammat Bakhti. It appears that after the sale a considerable amount of money was spent in improvements on the house. In the court of first instance there was an issue as to who had spent the money, and the court found that it had been expended out of the money which belonged to Musammat Bakhti. The court decreed the plaintiff's suit. On appeal the lower appellate court held, in agreement with the court of first instance, that there was no legal necessity for the sale, but came to the conclusion that the defendant had improved the house out of his own money, and for some reason or other remanded the case to the court of first instance. The present appeal has been preferred on behalf of the plaintiff, who contends that even on the finding that the house had been improved out of moneys belonging to the defendant, the plaintiff's suit should have been decreed and there was no necessity for a remand. We must of course accept the finding of the lower appellate court as to where the money came from which went to improve the house. At the same time we feel some doubt as to whether the court of first instance did not arrive at the right conclusion even on this issue of fact. It is somewhat improbable that the defendant spent out of his own funds this large sum of money upon the house, his title to which he must have known was most infirm and could only last for the period of Musammat Bakhti's life. Furthermore Musammat Bakhti undoubtedly had some means which might have been expended upon the house. Eventually what has become of this money we do not know. Accepting, however, as we are bound to do, the finding of the lower appellate

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court that the defendant expended the money out of his own pocket, in our opinion it affords no answer to the present suit. If the defendant chose to spend money on the house, he did so at his peril. It is quite clear that the partition between the two ladies operated merely during their life, and upon the death of Musammat Bakhti the property became the property of the surviving widow for the period of her life. We allow the appeal, set aside the order of the court below, and restore the decree of the court of first instance with costs in all courts.

Appeal decreed.

REVISIONAL CRIMINAL.

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March, 28.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

EMPEROR v. SITA RAM.*

Criminal Procedure Code, section 125—Security to keep the peace—Application to cancel order for security—Appeal—Revision.

An application made to the District Magistrate to cancel an order for security to keep the peace under section 125 of the Code of Criminal Procedure cannot be regarded in the same light as an appeal, and the Magistrate's order thereon would not be vitiated by the fact alone that the applicant had not been heard.

Semble that on an application for revision of an order for security to keep the peace the High Court should not refuse to interfere *solely* on the ground that the applicant has not first applied to the District Magistrate under section 125.

THE facts of this case are set forth in the following order of reference to a Divisional Bench.

WALSH, J.—I think this raises an important question which it is desirable that two Judges should decide. *A priori* I should have thought that the right of an applicant to apply to the District Magistrate to cancel a bond under section 107 of the Code of Criminal Procedure included the right to be heard on the application. Mr. Justice KNOX clearly thought so, not in the body of the case reported, but in *Emperor v. Abdur Rahim* (1), where he says that this Court will refuse to entertain an application in revision until the applicants have applied under

* Criminal Revision No. 164 of 1917, from an order of G. B. Lambert, District Magistrate of Benares, dated the 17th of January, 1917.

(1) *Weekly Notes*, 1905, p. 143.