

APPELLATE CIVIL.

1919
May, 22.

Before Sir George Knox, Acting Chief Justice, and Justice Sir Pramada Charan Banerji

MATHURA PRASAD (DEFENDANT) v. GOKUL CHAND AND OTHERS
(PLAINTIFFS) *

Landlord and tenant—"Sarkhat" executed by tenant in favour of a person with an imperfect title—Notice of ejectment Tenant not competent to deny title of person to whom he had given the sarkhat,

In execution of a decree against one of two joint owners of a house, the decree-holder caused the entire house to be sold. Whilst the house was under attachment, the other joint owner filed his suit for partition and obtained a preliminary decree, but the sale took place before this decree was made final. One M. P., who was a tenant of both the original owners, then executed a *sarkhat*, or acknowledgment of his tenancy, in favour of the auction purchaser, admitting that he was a tenant of the auction purchaser and liable to ejectment by him under the conditions stated therein.

Held that it was not open to M. P. to challenge the auction purchaser's right to eject him according to the terms of the *sarkhat* and to set up the *jus tertii* of one of the co-owners. *Lal Mohamed v. Kallanus* (1) distinguished.

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

Babu Durga Charan Banerji, for the appellant.

Pandit Uma Shanker Bajpai, for the respondents.

KNOX, A. C. J., and BANERJI, J. :—The suit out of which this appeal arises was one for ejectment of a tenant from a house and for arrears of rent. The house belonged to two brothers, Debi Prasad and Lalta Prasad. In execution of a decree obtained by one Incha Ram against Debi Prasad he caused the whole house to be attached as the property of Debi Prasad. During the pendency of the attachment a suit was brought by Lalta Prasad for partition of the house, and he made Debi Prasad and Incha Ram parties to that suit. He obtained a preliminary decree from the High Court for partition subject to certain conditions, but, before the final decree of the High Court was made, the property was sold by auction and was purchased by Ram Chand, the predecessor in title of the plaintiffs. We may mention that Mathura Prasad, appellant, was a tenant in the house, having been put into it by Debi Prasad and Lalta Prasad. After the auction sale, however,

* Appeal No. 40 of 1918, under section 10 of the Letters Patent.

(1) (1885) I. L. R., 11 Calc., 519.

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on the 4th of May, 1914, Mathura Prasad executed a *sarkhat* (that is, an agreement to hold the house as tenant) in favour of Ram Chand, and in that document he distinctly stated that he took the house from Ram Chand on a rent of Rs. 3 per mensem, and that if Ram Chand wanted to have the house vacated he (Mathura Prasad) would vacate it on receipt of a month's notice. The present suit was brought to eject Mathura Prasad from the house after serving him with the requisite notice, and for arrears of rent. He resisted the suit on the ground that the house belonged not only to Debi Prasad, in whose shoes Ram Chand stood, but also to Lalta Prasad, and that therefore the plaintiffs were not entitled to eject him from the house. This contention was over-ruled by the courts below and a learned Judge of this Court has upheld the decree of the lower appellate court.

We think that the plaintiff's claim has been rightly decreed. Mathura Prasad having executed a *sarkhat* in favour of the plaintiffs' predecessor, Ram Chand, and having agreed to hold the house from him and to vacate it on receipt of notice from him to do so, he is estopped from denying the plaintiffs' title to get the house vacated. This case seems to be similar to that of a tenant who has taken a lease from one of two co-owners of certain property and agreed to surrender the property if called upon to do so by the person who granted the lease. In such a case it is not open to the tenant to dispute his landlord's title. We were referred to the case of *Lal Mohamed v. Kallanus* (1). The circumstances of that case were different. Furthermore, this case was considered by the Calcutta High Court in the later case of *Khetu Das v. Surendra Nath Sinha* (2), and the view taken in it does not seem to have been accepted. In our opinion, apart from the fact that there was nothing on the record to show that the partition decree made in favour of Lalta Prasad had become final, the defendant is precluded now from disputing the plaintiffs' title. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1885) I. L. R., 11 Calc., 519.

(2) (1903) 7 C. W. N., 596.