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more now than it was in 1878, for it is a well-known fact that the price of immovable property has gone up enormously all over the country, particularly in a town like Calcutta. In the circumstances of the present case, considering that Musammat Lakhi Bibi had no other means of paying off the debt of her father, the course adopted by her was a perfectly legitimate one. We would also remark here that the plaintiff has brought his suit after a lapse of a number of years, nearly 33 years. He waited until the persons who were in a position to throw light on the transaction were all dead. His maternal grandfather, Sanwal Das, died only two years prior to the suit. Had he been alive he would have given us more detailed information about the sale of the house. The plaintiff was questioned on the point and he replied that he could not sue earlier because Sanwal Das always put him off by saying that he, Sanwal Das, would bring about a compromise with the vendees and the mortgagee Nur Muhammad. The explanation on the face of it is absurd. We think that the court below came to a correct finding with regard to the sale of the Calcutta house. The claim of the plaintiff was rightly dismissed. The appeal fails and we dismiss it with costs. The two sets of respondents will be entitled to their separate costs.

Appeal dismissed

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November, 8.

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

CHUNNI LAL (PLAINTIFF) *v.* BIRI SINGH AND OTHERS (DEFENDANTS)*

Ex-proprietary holding—Holding sold in execution of money decree—Formal possession obtained—Subsequent suit for recovery of actual possession—Execution of decree.

In execution of a simple money decree certain plots of land which formed part of the ex-proprietary holding of the judgment-debtor were sold by auction, and were purchased by the decree-holder. The decree-holder obtained formal possession of the plots purchased, but not actual possession. Within twelve years after the date of the order giving formal possession the decree-holder filed the present suit to obtain actual possession of the plot purchased by him.

Held that, inasmuch as the land in suit was part of an ex-proprietary holding the plaintiff's suit must be dismissed.

* Second Appeal No. 1354 of 1916, from a decree of A. G. P. Pullan, District Judge of Mainpuri, dated the 25th of July, 1916, confirming a decree of Vishnu Ram Mehta, Munsif of Shikohabad, dated the 25th of May, 1916.

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THE facts of this case were as follows :—

The plaintiff sued to obtain possession of certain land, described by him as a grove, which he purchased in 1901, at an auction sale in execution of a simple money decree against the defendants. He obtained formal delivery of possession in May, 1904, and the present suit was brought in July, 1915. It was found by both the courts below that the land was not a grove, but formed part of an ex-proprietary holding of the defendants, on which some trees had been planted. Under the Tenancy Act the sale of the land was void, and the plaintiff's suit was dismissed by both courts, his contention that the trees at least had passed to him being also repelled on the ground of limitation. The wajib-ul-arz contained a provision to the effect that the tenants were owners of trees standing on their plots and were entitled to cut them or sell them (*malik wo majaz intiqal ke mazareyan hain . . . unko ikhtiar diroh wo intiqal ka hasil hai*). The plaintiff appealed to the High Court, and on an issue being remitted to the lower appellate court, the finding returned was that the plaintiff had never been in possession of the trees.

Pandit *Kailash Nath Katju* (for Maulvi *Iqbal Ahmad*), for the appellant :—

No doubt, an ex-proprietary tenant's holding cannot be sold under the law. But it has been held that where a sale of a thing has taken place, although forbidden by law, and has been confirmed, without any objection having been raised by the judgment-debtor, the sale cannot subsequently be questioned by him or his representatives. *Lala Ram* v. *Thakur Prasad* (1). Secondly, under the terms of the wajib-ul-arz the tenants had a saleable interest in the trees on their plots ; therefore, the trees at any rate passed to the plaintiff by his purchase of the defendants' interest in the plot in question. The suit, being within 12 years from the date of delivery of formal possession against the defendants who were parties to the proceeding, is not barred by limitation. On this point the law has now been set at rest by the Privy Council in the case of *Thakur Sri Sri Radha Krishana Chanderji* v. *Ram Bahadur* (2).

(1) (1918) I. L. R., 40 All., 680. (2) (1917) 16 A. L. J., 33.

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Moreover, in the view that the trees alone and not the land passed to the plaintiff, symbolical possession only could be delivered to him, and the suit is not barred by limitation. *Rajendra Kishore Singh* v. *Bhagwan Singh* (1) is the latest Allahabad case on the point.

Munshi *Gulzari Lal* (for Munshi *Girdhari Lal Agarwala*), for the respondents:—

The finding is that the trees were planted on an ex-proprietary holding The nature of the holding is not changed thereby, and such trees form part of the ex-proprietary holding, so that under section 20 of the Tenancy Act, they are not saleable by the tenant or in execution of a decree against him. I am supported by the ruling in *Daya Kishen* v. *Mohammad Wazir Ahmad* (2). As for the entry in the wajib-ul-arz, it cannot create a custom contrary to the law. Moreover, even under the terms of the wajib-ul-arz the trees could not be sold as standing and growing trees; for, such a sale would really involve the transfer of an interest in the land itself. At the most, the trees might have been cut down and then sold. But the tenants could not have transferred a right to go upon the land and tend the trees as long as they stood. As regards the ruling in *Lala Ram* v. *Thakur Prasad* (3), cited by the appellant, it is distinguishable on the ground that in the present case the defendants, who were the heirs of the original tenant, denied in the written statement that they had any knowledge of the execution of decree or of the auction sale; and there is no finding that they had such knowledge. As they had no knowledge they could not have raised any objection at the time of the sale.

Pandit *Kailash Nath Katju*, was heard in reply.

RICHARDS, C.J., and BANERJI, J.:—This appeal arises out of a suit in which the plaintiff claimed possession of certain plots of land. It appears that more than twelve years before the institution of the suit the plaintiff or his predecessors in title obtained a simple money decree against the defendants or their predecessors in title. In execution of this decree the plots of land were put up for sale and purchased by the decree-holder.

(1) (1917) I. L. R., 39 All., 460. (2) (1915) 13 A. L. J., 833.

(3) (1918) I. L. R., 40 All., 680.

It has been found that the plots of land formed a portion of the ex-proprietary holding of the judgment-debtor, and both the courts below have held, and we agree with them, that, having regard to the provisions of the Tenancy Act, the interest of the ex-proprietary tenant could not be sold in execution of the decree. It is then said that the plaintiff is at least entitled to the trees. From the description of the plots of land or some of them it would appear that trees were growing on the plots of land, but it will be clearly seen from the sale certificate and from the whole nature of the present suit that the plaintiff was claiming not the trees but the plots. Of course he hoped that the trees would pass to him with the land. The plaintiff alleged that he had been in possession of the trees and gathering and receiving the fruits. An issue was referred on this point and the court below has held that the plaintiff was not in possession even of the trees. It is admitted that the *dakhalnama* giving the plaintiff formal possession of the subject matter (if any) of his purchase was within twelve years of the institution of the suit and it is now contended that the plaintiff is at least entitled to possession of the trees. In support of this contention the provisions of the wajib-ul-arz are referred to. This, no doubt, records the tenant's right to sell the trees growing on the holdings planted by themselves or of spontaneous growth, but we do not think that the wajib-ul-arz is sufficient to prove that the tenants had the right of selling trees as growing trees and to hold the land for perhaps fifty years or more. In addition to this, as we have already pointed out, we think that what was really sold to the plaintiff was the plot of land and that it was the land he really claimed in the present suit. Not only is there the statutory provision to prevent his being successful in the present suit, but it would appear that he slept upon such weak rights as he had for more than twelve years from the date of his purchase and almost twelve years from the date of receiving formal possession. We think that the view taken by the court below was correct and should be affirmed. We accordingly dismiss this appeal with costs.

Appeal dismissed.