

APPELLATE CIVIL

Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath

RAJ NARAIN DUBE (DEFENDANT) *v.* IMAM RAZA
(PLAINTIFF)*

1940
July, 23

Grove-land appertaining to zamindari—Sale of a share of the zamindari, the grove-land being expressly exempted—Whole of the grove-land thereafter appertains to the remainder of the zamindari and passes with it upon auction sale thereof.

If a zamindar plants a grove in the village in which he is a zamindar that grove appertains to his zamindari. If he sells a share of his zamindari, exempting from the sale and retaining for himself his entire share in the grove-land, that entire grove-land then appertains to his remaining share in the zamindari and, upon a subsequent auction sale of his remaining share in the zamindari, passes along with it to the auction purchaser.

Mr. N. Upadhiya, for the appellant.

Messrs. Shiva Prasad Sinha and Shah Habeeb, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a defendant's appeal arising out of a suit for possession.

The plaintiff in the suit seeks possession of a share in grove-land in the village Deolasi in the district of Mirzapur.

This share in the grove-land appertains to a 5 anna 4 pies share in mahal No. 69. The share belonged to one Ghasiawan. Ghasiawan sold three quarters of his share in the village and retained to himself a one anna 4 pies share. He exempted from the sale deed his share in the grove-land which appertained to the zamindari. The plaintiff Syed Imam Raza is an auction purchaser at the sale of the said remaining 1 anna 4 pies share which Ghasiawan retained in the mahal. He claims that in purchasing this 1 anna 4 pies share he purchased the one-third share in the grove-land which was owned by Ghasia-

*Second Appeal No. 1303 of 1937, from a decree of N. Storr, Civil Judge of Mirzapur, dated the 3rd of April, 1937, confirming a decree of J. K. Dar, Munsif of Mirzapur, dated the 3rd of September, 1936.

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wan. The defendants on the other hand maintained that only one-twelfth of the grove-land passed to the plaintiff by the auction sale. The remainder remained with Ghasiawan and on his death passed to his representatives.

There is no question that after the sale of a proportion of his holding in the zamindari Ghasiawan remained a zamindar in the mahal. His share was then a 1 anna 4 pies share. His share in the grove-land of the mahal, however, was more than a 1 anna 4 pies share; it was a one-third share as he had exempted the grove-land from the private sale of a proportion of his zamindari.

It was contended for the appellant that of the one-third share in the grove-land which Ghasiawan retained for himself only a proportion could be regarded as appertaining to the 1 anna 4 pies share which was left after the private sale. No authority was adduced by counsel for the defendant in support of this proposition and upon general principles we are unable to accept it.

If a zamindar plants a grove in the village in which he is a zamindar that grove appertains to his share in the zamindari. We see no reason why, if he elects to sell part of his zamindari holding and retain his entire share in the grove-land, that entire share should not continue to appertain to his remaining share in the village. It was suggested by counsel that a portion of the share in the grove-land was held by Ghasiawan as zamindar and the remaining portion which would have passed had it not been excluded from the private sale was held by him in some other capacity. What that capacity was learned counsel was unable to explain and we are unable to say from the information upon the record in what capacity he could have held that share other than in his capacity as zamindar. Admittedly the share in the grove-land was part of the zamindari and was held and enjoyed by Ghasiawan as a zamindar. It appertained, therefore, to his holding as a zamindar.

Upon the whole matter we are satisfied that the one-third share of grove-land formed part of the zamindari holding of the judgment-debtor at the time of the auction sale and that by that sale it passed to the plaintiff. The plaintiff is accordingly entitled to the decree which he seeks.

In the result the appeal is dismissed with costs.

There is no force in the cross-objection. The findings referred to in the cross-objection are findings in fact which cannot be disturbed. The cross-objection is accordingly dismissed with costs.

Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath

MUNICIPAL BOARD, CAWNPORE (PLAINTIFF) *v.* ROOP
CHAND JAIN AND ANOTHER (DEFENDANTS)*

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Transfer of Property Act (IV of 1882), section 100 (as amended)
—*Applicability to auction purchasers in execution of decrees*
—*Charge—Execution purchase of property subject to a charge in favour of the municipality—Purchaser without notice of charge—Enforcement of charge against the property in his hands—Transfer of Property Act, section 2(d)—Constructive notice.*

Section 100 (as amended) of the Transfer of Property Act applies to transfers by auction sales in execution of decrees. The saving provision in section 2(d) of the Act applies to chapter IV of the Act generally, and therefore to section 100, and is not confined to sections 85 to 90 thereof.

The amendment to section 100 introduced no change in the law as it stood before the amendment; the amendment was intended merely to clarify the legal position.

A purchaser for value, whether he takes by private purchase or by auction purchase in execution of a decree, takes the property free of all charges of which he has no notice actual or constructive.

A purchaser is said to have constructive notice when ordinary prudence and care should have impelled him to undertake an inquiry which would have disclosed the charge.

*Second Appeal No. 1622 of 1937, from a decree of S. M. Saiduddin, Civil Judge of Cawnpore, dated the 14th of May, 1937, confirming a decree of Raghubh Saran, Munsif of Cawnpore, dated the 4th of March, 1937.