

Before Mr. Justice Straight and Mr. Justice Brodhurst.

ABU HASAN (PLAINTIFF) v. RAMZAN ALI (DEFENDANT).*

1882
April 3.

Execution of decree—Sale of “zamindari rights”—Building appurtenant to zamindari rights.

The “rights and interests” of a zamindar in a certain village were sold in execution of a decree. At the time of the sale a certain building was his property *quâ* zamindar. *Held* that, in the absence of proof that such building was excluded from sale, the sale of his “rights and interests” in the village passed such building to the auction-purchaser. S. A. No. 245 of 1876 (1) followed.

THE plaintiff in this suit claimed possession of a building situate in a village called Hajipur and known as the “*killa*” (fort). He claimed the same as purchaser at an execution-sale in 1873 of the “rights and interests in the village of Hajipur” of Kadir Ali Khan, the proprietor of the village. The defendant had, subsequently to the plaintiff’s purchase, caused the building to be attached and proclaimed for sale as the property of Kadir Ali Khan. The plaintiff objected to the attachment, claiming the building by virtue of his purchase in 1873, but his objections were disallowed; and the building was put up for sale in execution of the defendant’s decree as the property of Kadir Ali Khan, and was purchased by the defendant. The plaintiff in consequence brought the present suit to recover the building. The principal question in the case was whether the sale of Kadir Ali Khan’s “rights and interests in the village of Hajipur” passed the *killa* to the plaintiff. It appeared that Kadir Ali Khan’s father had purchased the village, and with it the *killa*, about thirty years before the present suit was brought; and that the *killa* had always been occupied by him and his family as a residence. Both the lower Courts held that the sale of Kadir Ali Khan’s “rights and interests” in the village did not pass to the plaintiff his place of residence. In second appeal it was contended on behalf of the plaintiff that the *killa* belonged to Kadir Ali Khan as zamindar, and therefore the sale of his zamindari “rights and interests” passed it to the plaintiff.

Mr. Conlan and Pandit *Ajudhia Nath*, for the appellant.

Pandit *Bishambhar Nath*, for the respondents.

* Second Appeal, No 851 of 1881, from a decree of C. J. Daniell, Esq., Judge of Moradabad, dated the 2nd February, 1881, affirming a decree of Maulvi Muhammad Maqsood Ali Khan, Subordinate Judge of Moradabad, dated the 30th September, 1880.

(1) Not reported.

1882

ABU HASAN
v.
TAMZAN ALI.

The judgment of the Court (STRAIGHT, J., and BRODHURST, J.,) was delivered by

STRAIGHT, J.—We think that the plaintiff-appellant by his purchase at auction acquired the rights of Kadir Ali Khan in the *killa*, which must be taken to have passed in the description “rights and interests in the village of Hajipur.” As the building in question would seem to have belonged to Kadir Ali Khan *quâ* zamindar, and as his zamindari rights and interests were brought to sale in 1873 and purchased by the plaintiff-appellant, the presumption is that the *killa* was included, unless there is any thing to show that it was excluded expressly or by implication. As to this there is no evidence, and the plaintiff-appellant now holding the position of zamindar must we think be held entitled to the *killa*. In adopting this view we find we follow a judgment of Pearson and Oldfield, JJ., in S. A. No. 245 of 1873 (1), which has our concurrence. The appeal must be decreed with costs, the decision of the lower Courts reversed, and the plaintiff-appellant’s claim decreed.

Appeal allowed.

1882
April 5.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

SUKHDEO RAI (JUDGMENT-DEBTOR) v. SHEO GHULAM AND OTHERS
(DECREE-HOLDER AND AUCTION-PURCHASERS.)*

Execution of decree—Sale of “ancestral” land by order of the Court—Act X of 1877 (Civil Procedure Code), ss. 311, 320—Rules prescribed by Local Government under s. 320—Invalidity of sale.

▲ Subordinate Judge made an order for the sale in execution of a decree of certain immoveable property, which was “ancestral,” within the meaning of the Notification by the Local Government No. 671, dated the 30th August, 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. *Held* that, the order for the sale of such property having been made without jurisdiction, the sale was void and should be set aside.

CERTAIN land belonging to the judgment-debtor in this case was attached in execution of the decree. The judgment-debtor applied to the Court executing the decree to transfer its execution to the Collector on the ground that the land was “ancestral” within the meaning of the Notification by the Local Government No. 671, dated the 30th August, 1880. He produced as evidence that the land

* First Appeal, No. 159 of 1881, from an order of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 30th July, 1880.

(1) Not reported.