

FULL BENCH.

1882
February 2.

*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Striight, Mr. Justice Oldfield,
Mr. Justice Brodhurst, and Mr. Justice Tyrrell.*

JAGAN NATH (PLAINTIFF) v. BALDEO (DEFENDANT).*

*Purchaser at execution-sale—Suit for possession of property—Proof of title—Sale-
certificate—Act VIII of 1859, ss. 257, 259.*

Held that it was not incumbent on a purchaser at a execution-sale under Act VIII of 1859, which was confirmed in his favour under that Act, when suing for possession of the property, to produce a sale-certificate, but it was competent for him to prove his purchase *à lundè*. The confirmation of the sale in his favour was *primâ facie* evidence of his title to the property, and was sufficient to pass such title to him, of which a certificate, if afterwards obtained by him, would merely be evidence that the property had so passed.

Doorga Narain Sen v. Baney Madhub Mozoondar (1) referred to.

THIS was a reference to the Full Bench by Brodhurst and Mahmood, JJ. The facts of the case and the points of law referred are stated in the order of reference which was as follows :—

MAHMOOD, J.—The property in suit was owned by Badri, defendant No. 1, and in execution of a decree held against him by one Pragdat, it was sold by auction on the 1st September, 1873, and purchased by Jagan Nath, plaintiff in the present litigation. The sale was confirmed on the 24th October, 1873; but no certificate under s. 259 of the old Civil Procedure Code (Act VIII of 1859) was obtained by the purchaser. Moreover, it appears that Badri, defendant No. 1, continued in possession of the property, notwithstanding the sale above-mentioned. Bhaggi Lal, defendant No. 2, held another decree against Badri, defendant No. 1, and in execution thereof attached the same property, with the object of bringing it to sale. The plaintiff filed objections to the attachment on the 17th July, 1880, but his objections were disallowed and the property was sold by auction on the 22nd July, 1880, and purchased by Baldeo, defendant No. 3. The suit, from which this appeal has arisen, was instituted by Jagan Nath, on the 18th July, 1881, having for its object recovery of possession of the property in suit by a voidance of the auction-sale of the 22nd July, 1880, on the ground

Second Appeal No. 190 of 1882, from a decree of Sayyid Farid-ud-din Ahmad, Subordinate Judge of Cawnpore, dated the 24th November, 1881, reversing a decree of Maulvi Sakhawat Ali, Munsif of Akbarpur, dated the 18th August, 1881.

(1) I. L. R., 7 Calc., 207.

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that the property having been previously sold on the 1st September, 1873, Badri no longer had any right in the property, and that the sale in favour of defendant No. 3 was therefore of no avail. Badri, defendant No. 1, did not defend the suit, but the other two defendants resisted the claim by setting up various pleas which need not be noticed for the purposes of this appeal. The Court of first instance trying the suit on the merits decreed the plaintiff's claim. On appeal by the defendants, the lower appellate Court, holding that an auction-purchaser could not bring a suit for the possession of immovable property, by proving his auction-purchase, without procuring and filing a registered sale-certificate, has dismissed the suit without going into the merits of the case.

The present second appeal has been preferred by the plaintiff, and the grounds of appeal raise only one main point for determination, *viz.*, whether an auction-purchaser, who has not obtained the sale-certificate, can maintain a suit for recovery of possession of the property purchased by him.

In considering this question, it must be borne in mind, that the sale whereupon the plaintiff bases his title was held on the 1st September and confirmed on the 24th October, 1873, when the old Civil Procedure Code (Act VIII. of 1859) was in force. On the other hand, the sale in which Baldeo, defendant No. 3, purchased the property, took place on the 22nd July, 1880, and was governed by Act X of 1877. It has been contended by the learned pleader for the respondent, that the plaintiff never having taken out a certificate of sale, he could obtain that certificate now only under the provisions of the present Civil Procedure Code; that Act VIII of 1859 having been repealed, the provisions of the present Code must be held to govern the case; that s. 316 clearly shows that the title to the property sold cannot vest in the purchaser without a certificate of sale. It was further contended, that even if the case be taken to be governed by Act VIII of 1859, the plaintiff can have no better title to the property, as under the provisions of s. 259 of that Act, a certificate of sale was absolutely essential to complete the sale in favour of the plaintiff.

In regard to the first part of the contention, we have no hesitation in holding that the question, whether the plaintiff acquired

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proprietary rights under the sale of 1873 is not to be decided under the provisions of the present Civil Procedure Code. It is a well known rule of construction, that in the absence of express words to the contrary, a legislative enactment cannot have retrospective effect. The rule has passed into a maxim of law, and the Indian Legislature has expressly adopted it in s. 6 of the General Clauses Act (I of 1868). The question then is to be decided entirely with reference to the old Civil Procedure Code (Act VIII of 1859). Under that Act, there appear to have been many rulings, of the Bombay High Court principally, in which it has been held, that the mere confirmation of sale (under s. 256), does not invest the auction-purchaser with title to the property sold until and unless he obtains a certificate of sale and duly registers it under the Registration Law. Such seems to be the effect or tendency of the rulings noted — *Lalbai Lakhmidas v. Naval Mir Kamaludin Husen Khan* (1): *Padu Malhari v. Vasudev Pandurang* (2): *Mulji Bechar v. Anupram Bechar* (3): *Basapa v. Marya* (4): *Harkisundas Narandas v. Bai Ichha* (5): *In re Khaja Patthanji* (6): 6 Mad. H. C. Rep., Rulings, xxxix: *Bunda Ali Khan v. Bibee Ameernun* (7). But we are not, as at present advised, prepared to accept the rule so laid down, and in view of the circumstance, that whilst Act VIII of 1859 was in force, auction-purchasers in these Provinces frequently omitted to obtain certificates of sale, and that it seldom happened, that such certificates were ever registered under the Registration Law, we think the question raised by this case is important enough to be settled by a ruling of a Full Bench of this Court.

S. 256 of Act VIII of 1859 provides that “no sale of immoveable property shall become absolute until the sale has been confirmed by the Court.” The rest of the section relates to applications for setting aside the sale. S. 257 provides that, “if no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale.” S. 259 provides, that “after a sale of immoveable property shall have become

(1) 12 Bom. H. C. Rep., 247.

(4) I. L. R., 3 Bom., 433.

(2) 10 Bom. H. C. Rep., 435.

(5) I. L. R., 4 Bom., 155.

(3) 7 Bom. H. C. Rep., A. C., 136.

(6) I. L. R., 5 Bom., 202.

(7) 25 W. R., 493.

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absolute in manner aforesaid, the Court *shall grant* a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right, title, and interest of the defendant in the property sold, and such certificate *shall be taken and deemed to be a valid transfer of such right, title, and interest.*" Ss. 263 and 264 provide rules for delivery of possession of immoveable property to the auction-purchaser, and s. 268 relates to the question of resistance or obstruction offered to the auction purchaser in obtaining possession of the immoveable property purchased by him. Thus, in Act VIII of 1859, there are clear provisions which enable the auction-purchaser to obtain possession of the property from the judgment-debtor without the necessity of a suit. And this circumstance complicates the question raised in the case, because Badri, defendant No. 1, whose rights were sold in 1873, and purchased by the plaintiff, is still in possession, though he does not resist the suit.

We refer the following questions to a Full Bench :—(i) Does the confirmation of sale, under Act VIII of 1859, invest the auction-purchaser, (who has not obtained a registered or unregistered certificate of sale,) with the right, title and interest of the judgment-debtor in immoveable property sold by auction in execution of a decree? (ii) Can such non-certificated auction-purchaser, having never obtained actual possession under ss. 263 or 264, Act VIII of 1859, maintain a suit for recovery of possession of the property purchased by him, against the judgment-debtor, who, notwithstanding the sale of his rights, has continued in possession, and against a subsequent auction-purchaser, who purchased the right, title and interest of the judgment-debtor in the same property at a sale held under Act X of 1877?

Lala *Lalta Prasad* and Babu *Jogindro Nath Chaudhri*, for the appellants.

Munshi *Sukh Ram*, for the respondent (Baldeo, defendant No. 3).

The Full Bench delivered the following opinion :—

STUART, C. J., and STRAIGHT, OLDFIELD, BRODHURST and TYBRELL, JJ.—We do not think that it was incumbent on the

appellant to produce a certificate of the sale to him, and it was competent for him to prove his purchase *alimule*. The confirmation of the sale to him under Act VIII of 1859 was *prima facie* evidence of his title, and—to use the words of Pontifex, J., in *Duorga Narain Sen v. Baney Madhub Mozocmdar* (1)—“was sufficient to pass such title to him, of which a certificate, if afterwards obtained by him, would merely be evidence that the property had so passed.”

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February 16,

JAI RAM (DEFENDANT) v. DULARI CHAND AND ANOTHER (PLAINTIFFS).*

Act XII of 1881 (N. W. P. Rent Act), s. 191—Appeal—Appeal to High Court from appellate decree of District Judge passed in appeal from appellate decree of Collector—Jurisdiction.

An appeal lies to the High Court from a decree of a District Judge passed in appeal from an appellate decree of a Collector.

THIS was a reference to the Full Bench by Straight and Tyrrell, JJ. The facts of the case and the question referred are stated in the order of reference, which was as follows:—

TYRRELL, J.—In this case the Collector of the District heard an appeal from the decree of an Assistant Collector in a suit. The District Judge entertained and determined an appeal from the appellate decree of the Collector: and now the decree of the District Judge has been made the subject of what is described as a second appeal to this Court.

It is provided by the 191st section of the Rent Act, that “the decisions of District Judges passed in regular appeal under this Act shall be open to special appeal to the High Court in the same manner and subject to the same rules as the decisions of the District Judges passed on regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.”

We refer to the Full Bench the question, whether an appeal lies in this case, where the decree of the District Judge has not been passed in appeal from the decree or decision of a Court of first instance.

* Second Appeal No. 265 of 1882, from a decree of J. W. Haver, Esq., Judge of Gházipur, dated the 17th December, 1881, reversing a decree of W. Prasad, Esq., Collector of Ballia, dated the 11th August, 1881, reversing a decree of Munshi Ganpat Sahai, Assistant Collector, 2nd class, dated the 20th June, 1881.

(1) I. L. R., 7 Calc., 207.