

express any definite opinion upon this point, but in face of the statement made in his judgment, that no sufficient proof of any fraud on the part of the defendants had been given to entitle the plaintiffs to the relief contemplated in art. 95 of Act XV. of 1877, it would only involve the parties in unnecessary expense and delay to remand an issue as to the date when the alleged fraud first became known to the plaintiffs. We must therefore decree the appeal with costs.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

MUZAFFAR HUSAIN (DEFENDANT) v. ALI HUSAIN (PLAINTIFF)*

Sale in execution of decree of Revenue Court - Sale-certificate - Delivery of possession - Title of purchaser - Act XVIII. of 1873 (N.-W. P. Rent Act), s. 76 - Act XII. of 1881 (N.-W. P. Rent Act), s. 172 - Act XV. of 1877 (Limitation Act), sch. ii, Nos. 144, 178.

Property sold in execution of a decree of a Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title it is not necessary that he should obtain a sale-certificate or should be put into possession by the Collector.

Held, therefore, that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale-certificate might be an invalid document, and the Collector had not put him into possession.

The plaintiff Ali Husain purchased at an auction-sale, held in execution of a decree for rent of a Revenue Court, the house which was the subject of this suit on the 15th September, 1877. He applied on the 6th May, 1881, for a sale-certificate, and obtained it, by order of the Assistant Collector, from the Amin who held the sale, on the 30th July, and it was registered. He then, on the 11th August, applied to have delivery of possession of the property, and on the 30th November obtained an order, for possession to be given, from the Assistant Collector. On appeal by the defendant to the Collector that officer set aside the order of the 30th November, on the ground that the Assistant Collector had no power, under s. 172, Act XII. of 1881, to give possession, and that the plaintiff's application of the 11th August was made beyond the time allowed by No. 178, sch. ii. of the Limitation

* First Appeal No. 94 of 1882, from an order of Maulvi Muhammad Nazeem-ud-din Khan, Subordinate Judge of Shahjahanpur, dated the 8th June, 1882.

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Act. The plaintiff thereupon brought this suit against the defendant to obtain possession of the property by right of his purchase. The defendant contended, *inter alia*, that the claim was not maintainable, by reason of the Collector having refused to put the plaintiff in possession of the property, and of the invalidity of the plaintiff's sale-certificate, in consequence of the application to obtain it having been made beyond time. The Court of first instance allowed the defendant's contention and dismissed the suit. The lower appellate Court reversed the decree of the first Court, and directed the suit to be tried on the merits, holding that the suit was not barred by limitation, and No. 178, sch. ii of the Limitation Act, had no bearing on it. The defendant appealed to the High Court.

Pandit *Nand Lal*, for the appellant.

Shah *Asad Ali*, for the respondent.

The High Court (OLDFIELD and BRODHURST, JJ.) delivered the following judgment:—

OLDFIELD, J. (after stating the facts as stated above, continued :)
In our opinion the appeal must fail. Art. 178, which only refers to applications, can have no bearing on this suit, which, being a suit for possession of immoveable property, is governed by art. 144. But assuming that the plaintiff's applications to obtain a sale-certificate and possession of the property sold were made in the Revenue Court beyond the time allowed by art. 178, and that no proper sale-certificate has been obtained by him, and he has not been put in possession of the property sold at auction by the Revenue authorities, these circumstances can only affect the plaintiff's claim, if it can be shown that the property purchased at auction in execution of a Revenue Court decree does not vest in the plaintiff until he has obtained a sale-certificate from the proper officer and been put in possession by the Collector; in fact that those acts are necessary to perfect his title. This appears to us not to be the case.

The law applicable to the sale in question is the Rent Act XVIII of 1873, which contains its own provisions for the conduct of sales in execution of decrees, and there is no provision such as that contained in s. 316, Act X. of 1877 (which Act was not in force

at the time of this sale), to the effect that the title to the property sold shall vest in the purchaser from the date of the certificate and not before, nor did the Civil Procedure Code Act VIII. of 1859, then in force, contain such a provision. The only provision for granting a sale-certificate, which Act XVIII. of 1873 contains, is in s. 76, to the effect that when the purchase-money has been paid in full the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid; and the Act is silent as to confirmation of sale by superior authority or as to delivery of possession, though the present Rent Act, s. 172, contains a provision that, in the event of the sale of the property being completed, possession shall be given to the auction-purchaser by the Collector of the District in which the property is situated. There is therefore nothing in the Act to prevent the property vesting in the purchaser on completion of the sale and payment of the full price. It is the duty of the officer holding the sale to give the certificate under s. 76 and of the Revenue authorities to give possession, and the fact that an application to move the Court may have been made beyond the time allowed for applications under art. 178, (assuming the article applies to such applications), or that the Revenue authorities have failed to do what the law directs for giving sale-certificates and possession of the property sold, cannot forfeit the title which the auction-purchaser has acquired by purchase. We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Brodhurst.

ABUL HASAN AND OTHERS (DEFENDANTS) v. ZOHRA JAN (PLAINTIFF)*

Civil Procedure Code, s. 111—Set-off.

The heirs to *M*, deceased, appointed *A*, one of the heirs, manager of *M*'s estate with a view to the payment of the debts due by the deceased. A creditor of the deceased sued his heirs to recover his debt, and obtained a decree, in execution of which the share of *Z*, one of the heirs, in *M*'s landed estate was sold. The sale-proceeds exceeded *Z*'s share of such debt and she sued the other heirs for contribution in respect of the difference. The defendants claimed a set-off in

* Second Appeal No. 1467 of 1881, from a decree of R. D. Alexander, Esq., Judge of Allahabad, dated the 11th July, 1881, modifying a decree of Pramoda Charan Banarji, Subordinate Judge of Allahabad, dated the 31st March, 1881.

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