

1921

MUSSAMMAT
SHAHZADI
BEGUM
v.
MUSSAMMAT
KOKILA.

MACPHERSON
J.

my mind is clearly an incumbrance and in my opinion the view which has been taken by the Courts below is correct.

I would accordingly dismiss these appeals with costs.

MACPHERSON, J.—I agree. The only rights which a purchaser of a separate account at revenue sale acquires by his purchase are, under section 54 of the Bengal Revenue Sales Act, 1859, those which the owner of the separate account possessed at the time of the sale. In this instance, the rights of the previous owner were affected by the limitation which Fazlur Rahman had put upon them in 1906 in favour of his then wife, the present respondent; the purchaser accordingly secured them subject to the same limitation. I also agree that it comes within the term "incumbrance" expressed in section 54.

Appeals dismissed.

APPELLATE CIVIL.

Before Courts and Macpherson, J.J.

RAMDHANI LAL

1921

August, 4.

v.

CHAIRMAN OF THE PATNA MUNICIPALITY.*

Bengal Municipal Act, 1884 (Bengal Act III of 1884), section 238—"within 15 days", meaning of.

The notice referred to in section 238 of the Bengal Municipal Act, 1884, must be served within 15 days from the time when the building is commenced and not within 15 days from the time when the Municipality has notice of the building.

* Appeal from Appellate Decree No. 795 of 1913, from a decision of R. L. Ross, Esq., District Judge of Patna, dated the 16th May, 1913, reversing a decision of Babu Monindra Nath Mitra, Munsif of Patna, dated the 23rd December 1912.

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The facts of this case were as follows :—

Plaintiffs added a verandah to their house without having obtained the sanction of the Municipality. The Municipality served a notice under section 238, Bengal Municipal Act, on Budhan, son of plaintiff No. 1, who was in charge of the building. The notice having been disregarded the Municipality took action under section 180 and demolished the building at plaintiffs' cost.

Plaintiffs instituted the present suit claiming Rs. 1,000 as damages on the ground that the notice was not properly served and, that even if it was otherwise properly served, it was not served within fifteen days from the commencement of the building. The suit was decreed for Rs. 125. The Municipality appealed and the decision of the first court was set aside.

The plaintiff appealed to the High Court.

COURTS, J.—The facts of this case are simple. The plaintiffs built a verandah to their house without the sanction of the Municipality. A notice under section 238 of the Bengal Municipal Act was served on one Budhan Lal, son of the plaintiff Ramdhani, who was in charge of the construction. The notice was not obeyed, action was taken under section 180 by the Municipality and the verandah was demolished at the cost of the plaintiffs. The plaintiffs then brought this suit for Rs. 1,000 damages. They contended that the notice was not properly served and that in any case it was bad as it was not served within fifteen days of the commencement of building.

It was found by the trial Court that although the notice was properly served it was not a valid notice as it was served more than fifteen days after the building had commenced and the suit was decreed for Rs. 125. On appeal to the District Judge this decree has been set aside on the ground that the fifteen days referred to in section 238, runs from the date of knowledge of building, which he finds was the 8th of June and as the notice was served on the 20th of June it was a valid notice.

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COURTS, J.

The plaintiffs have appealed and the whole question for consideration is, from what time the period of fifteen days referred to in section 238 should run. Section 238 of the Bengal Municipal Act is as follows :

"Should any person commence to erect or re-erect such house, not being a hut, without giving notice.....the Commissioners may, by notice, to be delivered within fifteen days require the building to be altered or demolished as they may deem necessary."

There is absolutely nothing in the section to suggest that the period should run from the date on which the Commissioners have knowledge of the building and the words of the section seem to me to be open to no other construction than that the period should run from the date of the commencement of the erection of the building.

I would set aside the decision of the learned District Judge and would decree this appeal with costs and restore the decree of the trial Court.

MACPHERSON, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Das and Ross, J.J.

BASANTA KUMAR BOSE

v.

CHAIRMAN OF THE MUNICIPAL COMMISSIONERS
OF GIRIDIH.*

1921

August, 4.

Bengal Municipal Act 1884 (Bengal Act III of 1884), sections 237, 238, 239, 240 and 241—boundary wall, power of Municipality to frame bye-law relating to erection of.

The question for decision being whether a bye-law passed by a Municipality under section 241 of the Bengal Municipal Act, 1884, forbidding the erection of a boundary wall within five feet from the road without sanction was *ultra vires* the Municipality, *held*, that where a house is being built for the

* Appeal from Appellate Decree No. 250 of 1920, from a decision of Babu Suresh Chandra Sen, Subordinate Judge of Ranchi, dated the 13th January, 1920, reversing a decision of Babu Ram Krishna, Munsif of Giridih, dated the 6th December, 1918.