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DAS, J.

marriage, divorce, adoption and the like. It is quite clear that in this suit the plaintiff is not asking for a declaration as to his status.

Is he then asking for a declaration of his right as to any property? Clearly he is not. The right to any property must mean the right to any existing property. In this case he is not asking for any declaration as to any existing property. His whole suit is a suit for declaration that he will be entitled to contribution from the defendants if and when the occasion arises. That, in my opinion, is not contemplated by section 42 of the Specific Relief Act.

I would allow this appeal, set aside the judgments and decrees passed by the Courts below and dismiss the plaintiff's suit. In the circumstances of the case I would dismiss it without costs.

ADAMI, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

Before Jwala Prasad, A. C. J. and Ross, J.

MAHRAJ BAHADUR SINGH

v.

SHAIKH ABDUL RAHIM.*

1921, *July*, 30.

Bengal Patni Taluks *Regulation*, 1819 (*Regulation VIII of* 1819), *section* 14—Patni *Sale—sale set aside—meanwhile part of purchase money withdrawn by person holding decree against* patnidar's *judgment-creditor—suit by purchaser for refund, whether maintainable.*

Where a person who held a decree against the judgment-creditor of a *patnidar* withdrew, in execution of his decree, a part of the purchase money which had been deposited in the

* Second Appeal No. 409 of 1920, from a decision of Jadunandan Prasad, Esq., District Judge of Purnea, dated the 7th January, 1920, confirming a decision of Babu Ashutosh Mukharji, Subordinate Judge of Purnea, dated the 13th February, 1919.

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collectorate by another person who had purchased the *patni* at a sale held under section 14 of the Bengal *Patni Taluks* Regulation, 1819, *held*, on the *patni* sale having been set aside by a compromise decree in a suit brought by the *patnidar* against the *zamindar* and the purchaser, that the purchaser was entitled to maintain a suit against the person who had withdrawn the portion of the purchase money, for recovery of such portion.

Wigram v. *Buckley*(1), *Shaikh Abdoollah* v. *Oomed Ali* *Mobaruck Ali* v. *Ameer Ali*(3) and *Behari Lal Seal* v. *Maharaja Dhiraj Bijoy Chand Mohatab Bahadur*(4), referred to.

The facts of the case material to this report were as follows :—

The proprietor of the *patni* which formed the subject-matter of this suit put the *patni* up for sale under the Bengal *Patni Taluks* Regulation, 1918. It was purchased at that sale, on the 14th May, 1912, by Shaikh Abdul Rahim, the plaintiff for Rs. 1,26,000. The purchase money was deposited in the collectorate on the 13th June 1912. The *patnidar* instituted a suit to set aside the sale impleading the auction-purchaser and the proprietor as defendants.

Out of the sum deposited by the auction-purchaser Rs. 1,795-7-6, was withdrawn by Babu Mahraj Bahadur Singh, defendant No. 1, on the 15th May, 1913, in execution of a money decree which he had obtained against one Chaterpat Singh, who held a decree against the *patnidar*.

The *patnidar's* suit terminated in a compromise in accordance with which the sale was set aside on the 17th September, 1913. The purchaser thereupon withdrew the purchase money, less the amount withdrawn by Babu Mahraj Bahadur Singh, from the collectorate, and instituted the present suit against the latter for recovery of Rs. 1,795-7-6, the amount withdrawn by him. The holders of the *patni* were impleaded as defendants 2 and 3.

(1) (1894) 3 Ch. 483.
(2) (1873) 21 W. R. 252.
(3) (1866) 6 W. R. 321.
(4) (1905-1906) 10 Cal. W. N. ccxxxiv(n).

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The trial court decreed the claim against defendant No. 1. The latter appealed to the District Judge who dismissed the appeal and confirmed the decree of the trial court.

Defendant No. 1, appealed to the High Court.

Sultan Ahmed (with him *Chandra Sekhar Bannerji*), for the appellant.

K. P. Jayaswal (with him *Syed Muhammad Tahir*) for the respondent.

JWALA PRASAD, A. C. J.—This is an appeal by the defendant No. 1, against a decision of the District Judge of Purnea, dated the 7th January, 1920, whereby he dismissed the appeal of the appellant and confirmed the decree passed by the Subordinate Judge of Purnea in favour of the plaintiff.

The plaintiff had purchased the *patni* in question which was put up to sale by the proprietor under the *Patni* sale law, Regulation VIII of 1819, on the 14th May, 1912, for Rs. 1,26,000. The purchase money was deposited in the collectorate on the 13th June, 1912. Defendant No. 2, the *patnidar*, instituted a suit under section 14, clause (2), of the *patni* sale law to set aside the sale impleading the plaintiff-purchaser and the landlord as defendants in the suit. The suit terminated in a decree passed on compromise whereby the sale was set aside on the 17th September, 1913. Four months prior to this, on the 15th May, 1913, the appellant, defendant No. 1, withdraw Rs. 1,795-7-6 of the purchase money deposited in the collectorate by the plaintiff. The defendant No. 1 had a money decree against one Chaturput Singh who had held a decree against the *patnidar*. In execution of his decree defendant No. 1 attached the decree of Chaturput Singh and executed the same. He attached the said sum of Rs. 1,795-7-6 out of the purchase money deposited by the plaintiff in the collectorate and ultimately, as observed above, the said sum was withdrawn

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by him on the 15th May 1913. After the *patni* sale was set aside the plaintiff withdrew from the collectorate the purchase money of Rs. 1,26,000, minus the said sum of Rs. 1,795-7-6, which had been withdrawn by the defendant No. 1. The plaintiff now brings the present suit for realization from the defendant No. 1, of the said sum of Rs. 1,795-7-6, with damages at the rate of one rupee *per cent. per mensem*. The plaintiff subsequently joined defendants 2 and 3, who are the holders of the *patni*, as defendants in this suit. The courts below have decreed the plaintiff's claim against defendant No. 1.

In second appeal he raised the same contentions as he did in the court below; *first*, it is said that inasmuch as the appellant withdrew the sum of money claimed in the present suit in execution of his decree against the *patnidar* four months before the sale was set aside by means of the compromise decree dated the 17th September, 1913, and at that time the money in deposit in the collectorate belonged to the *patnidar*, defendants second party, the appellant could not be made liable for the said sum. *Secondly*, it is said that in any case the deficiency in the purchase money should have been made good by the proprietor of the *patni* at whose instance the sale had taken place and not by the defendant No. 1. *Lastly* it is contended that the plaintiff must proceed against Chaturput Singh who was directly benefited by the sum as it went to satisfy the decree as against him. The court below held that inasmuch as the suit was filed in June, 1912, and remained pending in court till it was compromised in September 1913, and the money was drawn by the appellant in the meantime on the 13th April, 1913, he must be presumed to have known of the suit and consequently he withdrew the money with notice of the claim of the *patnidar* to have the sale set aside, and that sale having been set aside, he must refund the money. As to the second and third contentions the court below held that Chaturput Singh could not in any case be liable to recoup the plaintiff with respect

to the land sold by him, and as the appellant took away the money he must be held to be liable to the plaintiff.

The ground taken by the court below for overruling the first contention probably rests upon the principle of *lis pendens*. It is true that under the law, embodied in section 52 of the Transfer of Property Act, which virtually agrees with the later views in England, no notice is necessary in order to apply the principle of *lis pendens*. But the principle of *lis pendens* applies to immovable property [*Wigram* v. *Buckley*(1)] and it is more than doubtful whether it can be extended to movable property such as in the present case, for the obvious reason that a person dealing with immovable property is expected to apprise himself of all the circumstances connected with it, notably pending litigation in respect of the right to the property. We are, however, dealing in the present case with movable property in the shape of money deposited in the collectorate as the purchase money of the *patni* which was sold for arrears of rent due from the *patnidar* under Regulation VIII of 1819. The sale was held under section 14 of the Regulation which has to be made "without reserve" on the date fixed for the sale of the tenure and is not to be postponed on any account unless the amount be lodged. The only way in which this peremptory sale can be contested is as laid down in that section by instituting a suit against the *zamindar* for the reversal of the sale. The plaintiff in such a suit, upon establishing a sufficient plea, is entitled to obtain a decree with full costs and damages. Then follows the most important clause in the section which runs as follows :—

"The purchasers shall be made a party in such suits, and upon decree passing for reversal of the sale, the court shall be careful to indemnify him against all loss, at the charge of the *zamindar* or person at whose suit the sale may have been made."

In the suit brought by the *patnidar* to set aside the sale the purchaser who is the plaintiff in the present case was made a party but the compromise decree

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of the 17th September, 1913, does not deal with the indemnity to which the purchaser was entitled. Now such a direction should in terms of the section have been made. In the case of *Saikh Abdoolah* v. *Oomed Ali*(1) it was held that the purchaser was not entitled to be indemnified for his loss by the *patnidar* when the sale is set aside on proof of its having been held without due service of the notice required by law. We do not know in the present case whether the sale was vitiated on account of non-compliance with the provisions of sections 9 and 10 of the Regulation or on account of the required notice of the sale not having been served. It was set aside in the present case by means of a compromise which had been arrived at between the parties and which was incorporated in the decree but the compromise set forth in the decree is silent as to the ground upon which the sale was agreed to be set aside. In any case the *patnidar* is not liable for the loss sustained by the purchaser on account of the sale having been set aside. As regards the purchaser's right to be thus indemnified by the *zamindar* the compromise decree is silent. The omission to make the necessary direction in the decree providing for the indemnity of the purchaser was the ground upon which the decree in the case referred to above was set aside and the case was remanded to enable the court to pass the necessary orders in favour of the purchaser to recover his loss against the *zamindar*.

In the case of *Mobaruck Ali v. Ameer Ali*(2) the Munsif who tried the case omitted to make the necessary direction in the decree under the aforesaid clause in section 14, in favour of the purchaser as against the *zamindar*. The contention that the purchaser should have applied to the Munsif to have his order reviewed was over-ruled and necessary orders were added to the decree in the High Court. The court observed as follows :—"That remedy is now shut out, as no review can be entertained after a special appeal has been preferred, and, therefore, if we decline to interfere, the

(1) (1866) 6 W. R. 321. (2) (1876) 21 W. R. 262.

purchaser will be obliged to bring a regular suit. Under section 14, Regulation VIII. of 1819, clause 1, it is provided that, in cases like the present, the court making a decree setting aside the sale shall be empowered to indemnify the purchaser against all loss at the charge of the *zamindar* or person at whose suit the sale may have been made; and we think that the purchaser, special appellant in appeal No. 318, is entitled to receive back from the *zamindar*, who brought the *patni* improperly to sale, the amount of the purchase money with interest at 6 *per cent. per annum* from the date of the sale up to date of repayment." This recognizes the right of the purchaser to bring a regular suit in case there happens to be an omission in the decree for the refund of the purchase money. There was such an omission in the present case in the compromise decree dated the 17th September, 1913, setting aside the sale. There was no review or appeal from that decree and the only course now left to the purchaser was to bring the present suit. In the case referred to above the sale was vitiated on account of some irregularity caused by the conduct of the *zamindar*. We do not know whether the sale in the present case was defective in any way and as to who was really responsible for the sale, the *patnidar* or the *zamindar*. Upon the materials in the case we are not in a position to fix the liability either upon the *zamindar* or upon the *patnidar*. The case therefore has to be decided upon the right of the purchaser to receive the money from the appellant who withdrew it from the collectorate and who must be deemed to be liable to refund it when the sale was ultimately set aside. The purchase money was deposited by the plaintiff with the officer conducting the sale under section 15 of the Regulation. That section provides that after such a deposit is made the purchaser is forthwith entitled to obtain a certificate of the sale and to procure a transfer to his name in the *katcherri* of the *zamindar* of the *patni* by receiving the usual *amaldastak* or order for possession. The sale proceeds in the hands of the officer conducting the sale are to be

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disposed of in accordance with the directions laid down in section 17 of the Regulation. One *per cent.* is carried to the account of Government for the purpose of meeting the expenses of any extra establishments maintained for carry into effect the provisions of the Regulation. The balance is next applied to make good in full to the *zamindar* or other person any sum which may be due to him. The balance, if any, then left, is to be sent by the officer conducting the sale to the Treasury of the Collector to be there held in deposit to answer the claims of the *talukdars* of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest in the land composing the *taluk* sold or any part of it. In the present case the suit contesting the sale was brought soon after the sale on the 13th June, 1912, the period of limitation for such a suit being one year under Article 12 of the Indian Limitation Act. It appears that the purchase money in deposit with the officer conducting the sale was not at all distributed in the manner set forth in section 17 of the Act and before such a distribution takes place it is impossible to foresee if anything would be available to the defaulter *patnidar*. As a matter of fact after the sale was set aside the purchaser was given a refund of the entire purchase money minus the sum withdrawn by the defendant No. 1. This clearly shows that it was not declared under section 17 what sum, if any, was then held by the Collector to the credit of the *patnidar* defaulter. It is therefore doubtful as to whether the appellant had any right to withdraw the money in question from the collectorate as belonging to the *patnidar*. No doubt he may have had a right to have the claim, if any, of the *patnidar* in the purchase money deposited with the Collector, attached to satisfy his decree against the *patnidar* when the sum due to the *patnidar* is determined. Assuming for the sake of argument that the money in deposit belonged to the *patnidar* and was kept to be paid to him or to his creditors, such payment was subject to the result of the

suit instituted by the *patnidar* to set aside the sale. The setting aside of the sale means that the *patnidar* should get back his property. He could not therefore retain the property and the price fetched by the property at the auction sale. The refunding of the purchase money is a necessary consequence of the setting aside of the sale of the property. If the *patnidar* was bound to refund it there is no reason why the defendant No. 1, who withdrew the money as belonging to the *patnidar* should not be called upon to do so. In any view of the case it appears just and equitable that the defendant, No. 1, who withdrew the money should not be allowed to retain it when the sale was set aside. The obligation to refund on the sale being set aside is towards the Collector who had the money in deposit and who paid it to the defendant No. 1. During the pendency of any dispute regarding the sale held by the Collector at the instance of the *zamindar*, the money is generally paid on security being taken from the person withdrawing the money for the refund of the same. Clause (8) of section 17 provides for this. It says—

"It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof on substituting Government securities, bearing interest, in lieu of the money so held in deposit."

This security is certainly to enure to the benefit of the person paying the money during the pendency of any litigation with respect to the money or the property such as the one brought by the *patnidar* in the present case to set aside the sale. The case of *Behari Lal Seal* v *Maharaja Dhiraj Bijoy Chand Mahatab Bahadur*(1) was decided on the basis of the aforesaid principle. In that case the creditors of the defaulting *patnidars*, as in the present case, withdrew a portion of the purchase money deposited with the Collector on the sale of the *patni* in execution of the decree of the *zamindar* for arrears of rent. Before that, as in the present case, the defaulting *patnidars* had brought a suit for setting aside the sale and the sale was ultimately set aside. The *zamindar* was obliged to refund the purchase money to the purchaser obviously under

(1) (1905-1906) 10 Cal. W. N. ccxxxiv(n).

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the direction of the court passed in the suit to set aside the sale under section 14 of the Regulation. The *zamindar* then instituted a suit to recoup himself from the creditors who had withdrawn the money pending the suit to set aside the sale. The suit was decreed. It is well to quote the short judgment of the court below :—"They" (that is the creditors) "took out a portion of the surplus sale-proceeds at a time when there was a suit pending, in which the question of the validity of the sale was involved. They therefore took out the money subject to the result of that suit; and when the sale was set aside there was an implied obligation on their part to return the money to the Court. They did not do so, and consequently the *zamindar* had to repay to the auction-purchaser Rs. 15,000, the whole of which he would not have been obliged to pay, if the defendants Nos. 1 to 9 had fulfilled the implied obligation which was upon them to return the surplus sale-proceeds to the Court." This decision definitely fixed the liability upon the creditor (in the present case the defendant No. 1) to return the money to the court so that the same can be refunded to the purchaser when the sale was set aside. If the *zamindar* could recover from the creditor who drew the money there is no reason why the purchaser himself could not recover the same, on the principle that it was the failure of the defendant No. 1, which prevented the plaintiff from getting back from the Collector the entire sum deposited by him. There is no substance in the contention of Mr. *Sultan Ahmed* that, though the *zamindar* could recover the money from the creditor who withdrew it from the collectorate, the purchaser himself cannot do so. As observed above the creditor was liable to refund the money and it was ultimately to go to the pocket of the purchaser. It is wholly immaterial whether the *zamindar* without paying in the first instance brings a suit to recover the money or the purchaser himself institutes the suit. I therefore uphold the decision of the court below and would dismiss this appeal with costs.

ROSS, J.—I agree.

Appeal dismissed.