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SHEOGOBIND RAM SAHU v. MAHPAT DUSADH.

inducted according to law, I think, section 20 of the Bengal Tenancy Act will always apply. In my opinion the case of *Binad Lal Pakrashi* v. *Kalu Pramanik* (1) is still good law where a tenant has been inducted legally and *bonâ fide* and where there is nothing to show that the tenant acquired his title without knowing that his lessor had a defective title or no title at all. Here the lessor had title, the tenant was duly inducted upon the land, and he is holding as a *raiyat*, within the meaning of section 20 of the Bengal Tenancy Act, for a period of more than twelve years. Therefore his occupancy right is complete and the suits for ejectment must fail. The suits are dismissed with costs in appeal No. 1089 of 1921 only. In the other appeals there is no appearance on behalf of the respondents and there will be no order as to costs.

Appeals dismissed.

APPELLATE CIVIL.

Before Mullick and Bucknill, J.J.

1923.

July, 10.

MAHADEO SINGH

v.

DHOBI SINGH.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *Order XXI, rules* 22 *and* 90—*Application to set aside sale on ground of irregularity, second appeal, whether lies.*

Order XXI, rule 22, does not contemplate that a fresh notice must be served for every application for execution made more than one year after the last order against the judgment-debtor.

There is no appeal from an appellate order confirming an order of the first court refusing to set aside an execution sale

* Appeal from Appellate Order No. 62 of 1923, from an order of Babu Ram Chandra Chaudhuri, Subordinate Judge of Monghyr, dated the 19th January, 1923, confirming an order of Babu Nand Kishore Chaudhuri, Munsif of Jamui, dated the 10th July, 1922.

(1) (1893) I. L. R. 20 Cal. 708, F. B.

on the ground of irregularity in publishing or conducting the sale.

Appeal by the judgment-debtors.

An application for execution was made one year after the decree, and notice under Order XXI, rule 22, Civil Procedure Code, was duly served upon the surviving judgment-debtor. One of the judgment-debtors being dead a notice was also served under Order XXI, rule 22, upon his legal representatives. In that execution a sale took place which was confirmed on the 15th June, 1918. There was an appeal and the sale was set aside by the Appellate Court on the 20th January, 1919. The present application for execution was made on the 22nd December, 1920, and the property was resold on the 16th March, 1921. An application was then made to set aside the sale. The Munsif dismissed the application and the Subordinate Judge, in appeal, affirmed his order on the 19th January, 1923.

The present second appeal was preferred against the order of the Subordinate Judge.

Sivanarain Bose, for the appellant.

H. P. Sinha, for the respondents.

MULLICK, J. (after stating the facts, as set out above, proceeded as follows) :—

It is clear that in so far as the application for setting aside the sale attacks the sale on the ground of irregularity in publishing and conducting the sale, no second appeal lies. The learned Vakil for the appellant, however, urges that where a question as to the jurisdiction of the Court in consequence of failure to issue a notice under Order XXI, rule 22, arises the order of the execution Court is one under section 47 of the Civil Procedure Code, against which there is a second appeal. Now the question in this case is whether it was at all necessary for the execution Court to issue a notice under rule 22 of Order XXI. In my opinion it was not. The rule in question requires the

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decree-holder to issue only one notice upon the judgment-debtor or his legal representative, as the case may be; the proviso to the rule makes this quite clear. The object of the rule is merely to protect the judgment-debtor or his legal representative from being lulled into a sense of security by the decree-holder's delay in executing his decree; but once the original decree has been put into execution and a notice has been served under rule 22 indicating his intention to proceed to execution, it does not seem to me that it is contemplated by rule 22 that a fresh notice must be served for every execution application made more than one year after the last order against the judgment-debtor. This point, therefore, fails and the order of the executing Court cannot be regarded as one made under section 47 of the Code. Therefore no second appeal lies.

On the merits also the appellants have no case. The lower Court has found, as a fact, that the sale proclamation was duly served. It has also found that the notice under rule 66 of Order XXI was duly served. It is objected that this notice gave the value of the property at the same figure as that which had been found to be inadequate in the proceedings in which the sale had been previously set aside. But the judgment-debtor, as has been pointed out by the Munsif, had notice of the valuation and it was his duty to appear before the Court and assist the Court in arriving at a true and proper valuation. Not having done so the principle of estoppel operates against him. The learned Munsif has relied on *Macnaghten* v. *Mahabir Pershad Singh* (1) and *Raja of Kalahasti* v. *Maharaja of Venkatagiri* (2). Both these are cases in point, and, in my opinion, the judgment-debtor is estopped for disputing the valuation.

The result is that the appeal is dismissed with costs.

BUCKNILL, J.—I agree.

Appeal dismissed.

(1) (1883) I. L. R. 9 Cal. 656; I. L. R. 10 I. A. 25.
(2) (1915) I. L. R. 38 Mad. 387.