APPELLATE CIVIL.

1925.

April, 24.

Before Mullick and Ross, J.J.

F. F. CHRISTIAN

v.

PRASAD RAUT.*

Sale Certificate, conclusiveness of—conflict between sale proclamation and certificate of sale, effect of.

There is nothing in the Code of Civil Procedure, 1908, which makes a certificate of sale conclusive as to the property sold. In granting a certificate it is the duty of the Court not to determine what property is to pass by the sale, but merely to record the already accomplished fact of a transaction that has taken place and to state what has been sold.

Where, therefore, the petition of execution, the writ of attachment and the sale proclamation are clear and unambiguous, any discrepancy between the description of the property contained in these documents and that which occurs in the sale certificate can have no effect.

Balwant Babaji Dhondge v. *Hirachand Gulabchand Gujar* (1), *Thakur Barmha* v. *Jiban Ram Marwari* (2), followed.

Pettachi Chettiar v. *Sangili Vira Pandia Chinnatambiar* (3), referred to.

In appeals nos. 663 and 680 to 687 of 1922, the appellant was the plaintiff in certain suits for rent against the defendants. The suits out of which these appeals arose were either wholly or partially dismissed. In appeals nos. 566 and 732 to 737 of 1922, the tenants were the appellants, these suits having been decreed against them.

* Appeals from Appellate Decrees nos. 566, 663, 680 to 687 and 732 to 737 of 1922, from a decision of G. J. Monahan, Esq., I.C.S., District Judge of Monghyr, dated the 27th March, 1922, modifying a decision of B. Nanda Kishore Chaudhuri, Munsif of Jamui, dated the 16th December, 1920.

(1) (1903) I. L. R. 27 Bom. 334.
(2) (1914) I. L. R. 41 Cal. 590; L. R. 41 I. A. 38.
(3) (1887) I. L. R. 10 Mad. 241; L. R. 14 I. A. 84.

The plaintiff sued for rent for the years 1324 to 1327 as being *mukarraridar* of certain shares in *taluka* Gadi Mahesri. His title arose in various ways—by private purchase, by lease and by mortgage from the co-sharers in the *mukarrari* and also by purchase in execution of two decrees. The execution cases in which these last purchases were made were no. 78 of 1913 and no. 253 of 1913; and it is with the shares purchased in these executions that the present controversy was concerned. The case for the plaintiff was that he purchased an interest in the *mukarrari* of the entire *taluka* Gadi Mahesri. The case for the defendants was that the purchases were confined to shares in the *mukarrari* of *mauza* Gadi Mahesri only; and as the suits related to villages in the *taluka* other than *mauza* Gadi Mahesri, the defendants denied that the relation of landlord and tenant existed between the plaintiff and themselves so far as the interest claimed to have been purchased in these executions extends to these villages. The Munsif who tried the suits disallowed the plaintiff's claim under both executions. The District Judge on appeal disallowed the claim under execution case no. 78 of 1913, but allowed it so far as execution case no. 253 of 1913 was concerned. Consequently there were appeals by both parties.

P. K. Sen (with him *A. K. Roy* and *Raghunandan Prasad*), for the plaintiff.

Noresh Chandra Sinha and *Bindeshwari Prasad*, for the defendants.

ROSS, J. (after stating the facts set out above, proceeded as follows): I shall deal first with the plaintiff's appeals. The relevant documents are the petition for execution (*Exhibit 19*), the writ of attachment (*Exhibit 24*), the sale proclamation (*Exhibit 25*), the writ of delivery of possession (*Exhibit 18*) and the sale certificate (*Exhibit 21*). The petition for execution shows that execution was sought in respect of certain shares in Dakhinwari Khut, Khut Kalan and

1925.

F. F. CHRISTIAN v. PRASAD RAUT.

ROSS, J.

Uttarwari Khut in *taluka* Gadi Mahesri, *asli mai dakhli*, including *tolas*, *chaks*, *kitas*, houses, jungles, hills, mines, *etc.*, together with the surface and subsoil rights appertaining to the lands of the said *taluka* held in perpetual *mukarrari*, *tauzi* no. 327. The *jama sadr* of the entire *taluka* along with that of *nisf* Katauna is stated and also the gross annual *jama* of the shares proceeded against and their respective values. The writ of attachment follows the petition for execution exactly and the sale proclamation is in similar terms. The report of the peon who delivered possession of the property purchased in execution states that he reached *mauza* Gadi Mahesri and put the decree-holder-auction-purchaser in possession of the *mahal*. The receipt for delivery of possession granted by a servant of the auction-purchaser states that the peon arrived at *mauza* Gadi Mahesri and delivered possession of the perpetual *mukarrari* right noted in the writ of delivery of possession. From the first three of these documents, therefore, it is clear that what the decree-holder proceeded against in execution and what the Court attached and proclaimed for sale was certain shares in the three *khuts* of *taluka* Gadi Mahesri and the report of delivery of possession is not inconsistent with these documents. The sale certificate, however, while following the earlier documents in other respects in close detail, contains the words "*mauza* Gadi Mahesri" instead of "*taluka* Gadi Mahesri"; and it is on this solitary expression that the whole defence in these suits has been based.

Now the law on the subject is clear and undisputed. As Lord Watson observed in *Pattachi Chettiar* v. *Sangili Vira Pandia Chinnatambiar*(1), the question is "What did the Court intend to sell; and what did the purchaser understand that he bought". In *Balvant Babaji Dhondge* v. *Hirachand Gulabchand Gujar*(2) there was a mortgage decree directing that the interest of five brothers in the

(1) (1887) I. L. R. 10 Mad. 241; L. R. 14 I. A. 84.
(2) (1903) I. L. R. 27 Bom. 334.

mortgaged property should be sold. The proclamation of sale followed the decree, but in the sale certificate, the name of one of the brothers only was mentioned. The learned Judges there pointed out that there was nothing in the Code which made a certificate of sale conclusive as to the property sold; that in granting a certificate, it is the duty of the Court not to determine what property is to pass by the sale, but merely to record the already accomplished fact of a transaction that has taken place and to state what has been sold. The Court has no power to do more or to alter the fact of the sale which has actually taken place. Its action in granting the certificate is ministerial and not judicial. It is pointed out that the sale is an offer and acceptance; that the offer is made by the Court and is advertised by the proclamation of sale; and that so far as concerns the identification of the property to be offered for sale, this is the only declaration which is authorized or required. In *Thakur Barmha* v. *Jiban Ram Marwari*(1) in which there was a conflict between the sale proclamation and the certificate subsequently granted it was held by the Judicial Committee that what is sold at a judicial sale can be nothing but the property attached and that that property is conclusively described in and by the schedule to which the attachment refers. As against such description it was held that the certificate of sale had no effect. Unless therefore there is something to show (and it is not suggested in the present case that there is anything) that the Court sold something less than was advertised for sale, the sale proclamation is conclusive. This being the law it seems clear that if the petition for execution, the writ of attachment and the sale proclamation are clear and unambiguous, any discrepancy from the description of the property contained in these documents which occurs in the sale certificate can have no effect. Then the sale certificate itself is by no means unambiguous and it is not necessary to suppose that it was intended to refer to a different property. The term "*mauza*" might

(1) (1914) I. L. R. 41 Cal. 590; L. R. 41 I. A. 88.

1925.

F. F. CHRISTIAN v. PRASAD RAUT.

ROSS, J.

include the whole *mahal*; and from the fact that the *tauzi* number is given this was apparently the intention. A village which was merely a constituent of the *mahal* would not have a *tauzi* number. The learned Munsif based his decision entirely on the fact that the annual *jama* as stated in the various documents was much lower than what the annual *jama* of the whole *mahal* would have been and was more likely to be the *jama* of the single village. The learned District Judge has also accepted this argument and has further proceeded on the ground that the price paid seems to be far too low for a share in the entire *taluka*. Now even if the *jama* is mis-stated, if the document is otherwise unambiguous, this item would be disregarded as misdescription. But there are in truth no materials for the conclusion that the *jama* stated in these documents is the *jama* of *mauza* Gadi Mahesri rather than of the entire *taluka*. The learned Munsif seems to have confused the *jama* with the annual income. The sale proclamation and the other documents do not pretend to state what the annual income of the share is. The learned Munsif has pointed out that the cash rental of *mauza* Gadi Mahesri is about Rs. 600 and that there are more than 250 acres of *kamat* lands and there is also *batai* land. Now the produce of *kamat* lands would not naturally be included in the term *jama* and there is nothing to show what the income of the *batai* land is. Moreover there are no materials whatsoever for estimating the *jama* of the entire *taluka*: and the ground upon which the Munsif has decided this case must therefore be treated as purely speculative and it is not warranted by the terms of the documents themselves.

With regard to the observations of the learned District Judge on the price, it may be that the property was purchased cheap but there may be many reasons for that. It is impossible to say on the materials before us how low the price was and this is no criterion for construing documents. It seems to me that this is a very plain case which does not admit doubt; the documents with the doubtful excep-

tion of the certificate of sale are all consistent with only one conclusion, namely, that what was purchased was a share in the entire *taluka*. But the decisions above cited show that the certificate of sale cannot override the other documents which are conclusive as to the property actually sold.

The learned Vakil for the respondents contended that the case is concluded by findings of facts. In my opinion this is not so. It is true that the learned District Judge has mentioned the execution petition and the writ of attachment and the sale proclamation in stating the argument on behalf of the plaintiff; but there is nothing to show that he considered these documents or their legal effect. I would therefore allow these appeals with costs.

With regard to the appeals of the defendants, the ground upon which the Munsif limited the purchase in execution case no. 253 of 1913 to a share in *mauza* Gadi Mahesri was that the shares mentioned in the sale certificate in this case are the shares which were actually owned by the judgment-debtors in that village, whereas they had different shares in the different villages constituting the *taluka*. He was therefore of opinion that the proceedings in execution must be limited in their operation to *mauza* Gadi Mahesri alone. The learned District Judge has properly refused to give effect to this argument pointing out that, if in fact the judgment-debtors have larger shares in some of the villages than those stated in the sale proclamation, the excess will not be affected by the sale. In this case all the documents are consistent and leave no room for doubt that the shares which were proceeded against in execution and were attached and proclaimed for sale and sold were the shares of the judgment-debtors in the entire *taluka*. It was suggested that the learned District Judge has erred in his calculation of the price because he has under-stated the shares that passed by the sale. But, as I have pointed out in dealing with the plaintiff's appeals, there are no materials for ascertaining the

1925.

F. F. CHRISTIAN v. PRASAD RAUT.

ROSS, J.

real value of this property; and in any case if the purchaser purchased at a low price, that is not a matter which affects the present question.

The defence in these suits appears to me to be entirely without merit and to rest on nothing better than a clerical mistake in a document of minor importance.

The result is that the plaintiff's appeals must succeed and are allowed with costs and the suits out of which these appeals arise must be decreed in full with costs throughout. The tenants' appeals are dismissed with costs.

MULLICK, J.—I concur entirely. It was argued that this being a second appeal it was not competent to us to interfere with the District Judge's finding in regard to the identity of the property which was sold. The answer to this is that as the finding relates to a mixed question of fact and law it is open to revision in second appeal.

Appeal dismissed.

REVISIONAL CIVIL.

Before Jwala Prasad, J.

LAURENTIUS EKKA

v.

DHUKI KOERI.*

1926.

March, 13.

Advocate, whether can act without a vakalatnama—*Code of Civil Procedure,* 1908 (*Act V of* 1908), *sections* 2(*15*) *and* 119, *Order III, rules* 1 *and* 4—*Rules of the High Court at Patna,* 1916, *Chapter III, rule* 4, *clauses* (*iii*) *and* (*iv*)—*General Rules and Circular Orders, Chapter I, rule* 2, *clause* (3)—*Letters Patent of the Patna High Court, sections* 7 *and* 8—*Legal Practitioners Act,* 1879 (*Act XVIII of* 1879),

* Civil Revision nos. 381 of 1923 and 382 of 1923, against an order of Rai Bahadur A. N. Mitter, Subordinate Judge of Ranchi, dated the 9th June, 1923.