APPELLATE CIVIL.

Before Wort and Rowland, JJ.

1936.

January, 17.

BHAGWATI SARAN

v.

RAI KISHUNJI.*

Revenue Sales Act, 1859 (Act XI of 1859), section 31—surplus sale proceeds paid by Collector to persons entered in Collector's Register—suit by rightful owner to recover the same from the person who had been paid, if maintainable—interest, if payable from date of demand.

Where a certain estate was sold for arrears of government revenue and the surplus sale proceeds were paid by the Collector under section 31 of Act XI of 1859 to the defendant who was the recorded proprietor of the estate. In a suit by the plaintiff who had purchased the estate prior to the revenue sale for the recovery of the surplus sale proceeds and interest thereon it was contended by the defendant that there was nothing in contract or quasi contract under which the plaintiff could recover.

Held, that the contention could not be supported. The plaintiff's cause of action was for money paid and received to his use and as there was no specific provision of the law of India the rule of justice, equity and good conscience should be applied.

Section 31 of Act XI of 1859 is a section which merely directs the payment by the Revenue Officer to a certain person, that person being the person whose name is entered as proprietor and there is nothing in that section which in any way governs the right of a person who is in fact entitled to the surplus sale proceeds by recovering them from the person paid by the Collector under the section.

Held, also that plaintiff was entitled to interest only from the date upon which the demand was made.

* Appeal from Appellate Decree no. 857 of 1932, from a decision of S. K. Das, Esq., I.C.S., District Judge of Gaya, dated the 4th of May, 1932, confirming a decision of Babu Radha Krishna Prasad, Subordinate Judge of Gaya, dated the 26th of August, 1931.

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Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Wort, J.

Khurshed Husnain and *Sarju Prasad*, for the appellant.

Baldeva Sahay, for the respondent.

WORT, J.—The defendant is the appellant in this appeal which arises out of an action in which the plaintiff sought to recover the sum of Rs. 1,890-14-6 principal and interest amounting in all to a sum of Rs. 2,468-4-6. This amount was the surplus sale proceeds of a revenue sale of certain property of which the defendant was the recorded proprietor. The property, however, had been sold to the plaintiff prior to the date upon which the revenue sale was held resulting in the surplus sale proceeds here claimed. The defendant having been paid by the Collector under section 31 of Act XI of 1859, this action was brought by the plaintiff.

It was contended by Mr. Khurshed Husnain appearing on behalf of the defendant-appellant that, as the Collector was bound to pay his client under section 31 of Act XI of 1859, he was in law entitled to the sum, and that there was nothing either in contract or quasi contract under which the plaintiff could recover. In my judgment the contention cannot be supported. Section 31 of Act XI of 1859 is a section which merely directs the payment by the Revenue Officer to a certain person, that person being the person whose name is entered as proprietor and there is nothing in that section which in any way governs the right of a person who is in fact entitled to the surplus sale proceeds by recovering them from the person paid by the Collector under the section.

The learned Judge in the Court below relied upon certain decisions. The first was the decision of this Court in *Harihar Misser* v. *Syed Mohamed*(1). The second was the decision of the Calcutta High Court

(1) (1916) 1 Pat. L. J. 374.

in *Bejoy Lal Seal* v. *Noyunmanjory Dasi*(1). In neither of the cases was the question before us in this appeal decided. In the Calcutta case, in circumstances exactly similar to those which are present in this case, there was no contest as regards the liability of the defendant, the only question for determination being the question of limitation. In the Patna case, Roe, J., delivering the judgment of the Court as to whether Article 62 or Article 120 of the Limitation Act applied, made this observation:

"It is not a question of the defendant's intention in taking the money. He undoubtedly intended to rob the plaintiff and intended to keep the money for his own use. But this is not the point. The point is, for whose use did the party making the payment intend the money?"

The learned Judge then proceeded to make certain observations as regards the knowledge of the Collector as to whom the money really belonged. In so far as the Judge purported to decide that it was the question of the knowledge of the Collector, I would respectfully disagree. It seems to me that the real test in the case is, not the knowledge of the Collector, not the question, as suggested by Mr. Husnain, as to whether he had rightfully received the money from the Collector, but to whom the money rightfully belonged. It is not suggested in this case that the money rightfully belonged to the defendant excepting in the sense that under section 31 of the Act of 1859 the Collector was bound to pay the defendant. That, in my opinion, in no sense concludes the matter.

Mr. Husnain has further advanced the argument that under no specific provision of law is the plaintiff entitled to recover the sum and his action must fail. In connection with that argument he has referred us to section 72 of the Contract Act which provides:

"A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it",

(1) (1919) 24 Cal. W. N. 294.

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and rightfully contends that this section does not apply to the facts of this case. He then advances an argument with which I cannot agree, namely, that the cause of action not coming within the provision of section 72, and, as there is no other definite provision of law, the plaintiff has no cause of action. But in this case the cause of action is for money had and received to the plaintiff's use and in considering that cause of action we are applying no specific provision of the law of India as there is none, but the rule of justice, equity and good conscience: in other words, in the absence of any rule in India, the law of England, as pointed out by Lord Hobhouse in the case of *Waghela Rajsanji* v. *Shekh Masludin*(1) to which repeated reference has been made by me in this Court. Mr. Husnain in this connection contends that unless it could be shown that there was a contract or quasi contract, the action must fail. The history of an action for money had and received is discussed in *Sinclair* v. *Brougham*(2). Lord Haldane, in the course of his speech referring to certain authorities, made this statement:

"In its origin an action of tort, it was soon transformed into an action of contract, becoming afterwards a remedy where there was neither tort nor contract. Based at first only upon an express promise, it was afterwards supported upon an implied promise, and even upon a fictitious promise. Introduced as a special manifestation of the action on the case, it soon acquired the dignity of a distinct form of action, which superseded debt, became concurrent with account, with case upon a bailment, a warrantee and bills of exchange and competed with equity in the case of the essentially equitable quasi-contracts growing out of the principle of unjust enrichment."

It is clear from that statement and from the judgments of the other learned Judges with regard to

(1) (1887) L. R. 14 Ind. App. 89.
(2) (1914) A. C. 398.

this matter that it is neither a case of contract nor is it a case of tort, but, as described in the English authority as an action on the case in which the form of relief granted is to meet the circumstances of the case. Mr. Husnain's argument, therefore, that unless it can be shown that the action was either in contract or in tort it must fail, obviously fails. It seems to me, however, that the matter is quite beyond argument. All the High Courts in India have recognized the right impliedly and no case has been called to our attention in which it has ever been suggested that the action in the circumstances of this case would not lie, and indeed the very authorities, upon which by implication Mr. Husnain relies, are cases which are distinctly against the contention which he advances. In my judgment the decision of the learned Judge in this regard was correct and his judgment must be affirmed.

There is one matter, however, in which the appellant is to some extent entitled to succeed. There was a demand made by the plaintiff for this sum on the 13th of September, 1929, the money having been withdrawn on the 30th of January, 1928. It was from the 30th of January, 1928, that interest has been allowed by the Court below. It is clear not only on the authority of this Court in which this matter has been discussed, but also on a reading of the statute itself, that is to say, section 31 of Act XI of 1859, that the plaintiff is entitled to interest only from the date upon which the demand was made, that is to say, from the 13th of September, 1929. A question was mentioned in the argument as regards the rate of interest but this is not found in the grounds of appeal and in any event the interest allowed by the Judge up to the date of the suit is interest which is customary in India.

For those reasons with the modification as regards interest indicated above, I think the appeal fails and it must be dismissed with costs.

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It is said that the name of the plaintiff as given in the memorandum of appeal is not in accordance with that given in the plaint. Let the memorandum be corrected in accordance with the plaint.

WORT, J.

ROWLAND, J.—I entirely agree. Indeed it was somewhat difficult to find any basis, either in principle or in authority, on which Mr. Khurshed Husnain's argument could hope to be acceptable. But the underlying idea was perhaps that the provisions of section 31 of the Revenue Sales Act, which gave directions that the sale proceeds of an estate are to be applied in a certain manner and paid to certain persons, would operate to create title in those persons; that is to say (after satisfaction of the Government dues) in the registered proprietors. Certainly the Act does not say so and in a somewhat analogous matter there is a different special provision made. I refer to section 60 of the Bengal Tenancy Act which contains a special provision regarding the registered proprietor of an estate. Section 60 enacts that the registered proprietor is authorized to give a receipt which shall be a sufficient discharge for any rent payable to the proprietor and if he sues for the rent the person liable to pay cannot plead that the rent is due to any third person. But it is well settled that mere entry of one's name in the registers of the Collectorate does not either create or prove title and section 60 has the express saving that

> "nothing in this section shall affect any remedy which any third person entitled to the property may have against the registered proprietor".

Now it is true that section 31 of the Land Revenue Sales Act (Act XI of 1859) has no express saving similar to that in section 60; but I am entirely satisfied that the Courts cannot introduce a new principle and, merely because of the absence of such a saving, hold that for the purposes of section 31 an entry in the Land Registration Register creates ownership in the registered proprietor. Therefore the suit has to

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be decided on the simple question, in whom the ownership of the property was when it was sold? The result can only be that which my learned brother has stated in his judgment.

Appeal dismissed.

ROWLAND, J.

APPELLATE CIVIL.

Before Macpherson and Fazl Ali, JJ.

MAHARAJA PRATAP UDAI NATH SAHI DEO

v.

BARAIK LAL SAHI.*

1936.

January, 14, 20.

Chota Nagpur Tenancy Act, 1908 (*Act VI of* 1908), *sections* 181 *and* 208—*decree for rent passed by Deputy Collector and not executable as rent decree, if can be executed in Civil Court—Deputy Commissioner's jurisdiction to transfer decree, if confined to Courts under the Act.*

M's application for execution of a decree for rent passed by the Deputy Collector of Ranchi under section 208 of the Chota Nagpur Tenancy Act having been rejected on the ground of defect of parties, he applied for transfer of the decree to the Munsif which application was rejected by the Deputy Commissioner. Thereafter *M* applied for execution before the Munsif.

Held, (*i*) that under section 38 of the Code of Civil Procedure, a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution and that in the circumstances the Munsiff had no jurisdiction to execute the decree;

(*ii*) Section 182 of the Chota Nagpur Tenancy Act lays down that a decree or order passed by a Deputy Commissioner may be executed either by his own Court or by any other prescribed Court and the Court prescribed being his own

* Appeals from Appellate Orders nos. 302 and 316 of 1934, from an order of H. Whittaker, Esq., I.C.S., Officiating Judicial Commissioner of Chota Nagpur, dated the 29th September, 1934, affirming an order of Maulavi S. A. Hamid, Munsif of Ranchi, dated the 6th August, 1934.