

APPELLATE CIVIL.

Before Mr. Justice Baguley.

MA HAWA BI

vs.

SEIN KHO. *

1927

Aug. 25

Auction sale by Court, what passes in—No warranty of title—Distinction between land and interest in land—Auction-purchaser when entitled to rent of land purchased—Ground for revision.

Applicant bought at the Court auction held in execution of her decree, some paddy land, the property of her judgment-debtor. She could not get immediate possession as respondent claimed to be a lessee from the judgment-debtor and remained in occupation till he had reaped his crops. Applicant sued the respondent for the year's rent. The trial Court allowed her claim, but the lower Appellate Court set aside the decree on the ground that, as section 8 of the Transfer of Property Act (IV of 1882) did not apply to execution sales, applicant must be deemed to have bought the land only and was not entitled to the rent subsequently accruing.

Held, reversing the judgment, that land as such is not sold at a Court auction, and there is no warranty of title. All that passes at the Court auction is the right title and interest of the judgment-debtor, *i.e.*, the purchaser is placed exactly into the shoes of the judgment-debtor as regards the land sold. Applicant by her purchase became the outright owner of the land but in place of immediate possession which she could not get, she got the judgment-debtor's right to get the rent payable by the respondent at the expiry of the cultivating season, agricultural rent being not apportionable. There is a distinction between land itself and interests in land. The fundamental point of the case being missed by the lower Court, it was a fit case for revision.

Maung Tin—for Applicant.

Leong—for Respondent.

BAGULEY, J.—Ma Hawa Bi got a decree against one Maung Khin. In execution she attached some paddy land as the property of her judgment-debtor. At the Court auction which ensued she bought the property, with the permission of the Court, and the sale to her was confirmed on October 12th, 1925. The sale took place on September 10th, 1925, and her title dates from then. She applied to be put in possession, but she

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failed to get possession immediately, as the defendant claimed to be in possession as lessee from Maung Khin. He continued in occupation until he had reaped his crops and she now sues for the year's rent. The defendant claimed that he had paid the rent in advance to Maung Khin, but this claim has been rejected and rightly so in my opinion, by both the lower Courts.

The trial Court was unable to discover the exact rent agreed upon between the defendant and Maung Khin and has given the sum of Rs. 450, the amount claimed, holding that that would be a reasonable rent. The Additional District Judge in appeal set aside the decree of the trial Court and dismissed the suit. Against this appellate decree the present application in revision has been filed. The point taken by the Appellate Court was that the plaintiff bought only the lands in question and, as section 8 of the Transfer of Property Act does not apply to execution sales, she was not entitled to the rent subsequently accruing for the lease. In my opinion this is a total misconception of the facts.

I am well aware that the sale certificate only mentions the lands as being sold. This is a very common practice in mofussil Courts, but it is quite erroneous. Land as such is never sold at a Court auction. It is the fundamental basis of Court auctions that there is no warranty of title. If the Court purported to sell lands outright, and it was subsequently discovered that the judgment-debtor was not the sole outright owner the vendor could be proceeded against for breach of warranty. All that passes at the Court auction is the right, title and interest of the judgment-debtor, *i.e.*, the purchaser is placed exactly into the shoes of the judgment-debtor as regards the land sold.

In this case, so far as it appears from the record, the judgment-debtor, Maung Khin, was the outright owner of the land, but he had not, at the moment, uncontrolled possession of the land. He had, as he had a perfect right to do, leased the land to the defendant. Therefore, though he was the outright owner of the land, he had no right to possession of the land until the end of the current cultivating season. On the other hand, in place of his immediate right to occupy the land as owner he had got the right to receive, in his capacity as owner, the rent payable by the defendant at the end of the cultivating season. As the plaintiff bought the whole of Maung Khin's right, title and interest in the land, she also became by her purchase the outright owner of the land, limited by the fact that she could not lawfully claim immediate possession of it, but in place of this she had, arising out of the land, the right to get the rent payable by the defendant at the expiry of the cultivating season in place of her right to immediate possession as owner. As agricultural rents are not apportionable, for they accrue once and for all at the time the crops are reaped and do not accrue from day to day there could be no question of apportionment. The plaintiff was therefore entitled to the rent, quite apart from section 8 of the Transfer of Property Act, and entirely from first principles. Judges must distinguish between land itself, and interests in land.

The lower Court has not merely made a mistake of law, it has totally failed to grasp the fundamental point of the case. I therefore think that I can interfere in revision.

I therefore set aside the decree of the lower Appellate Court and restore the decree of the trial Court, giving the plaintiff a decree for Rs. 450. The defendant will bear the plaintiff's costs throughout.

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