1885

NANDRÁM MOTIRÁM v. KÁCHÁ BHÁU.

"'Can a Civil Court issue a new certificate of sale on a proper stamp, while the old one on insufficient stamp is available, on payment of penalty ordered by the Collector?'"

There was no appearance for the parties.

SARGENT, C.J.—The Court, having given the purchaser a certificate of sale, is under no obligation to give him another for the sole purpose of evading the penalty, which he has incurred by not having presented in the first instance to the Court a paper properly stamped for it.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

GOPA'LRA'O GANESH, (ORIGINAL PLAINTIFF), APPELLANT, *v.* KISHOR KA'LIDA'S, (ORIGINAL DEFENDANT), RESPONDENT.*

1885. *July 6.*

Landlord and tenant—Ejectment—Notice to quit—Finding of Appellate Court without statement of reasons not conclusive.

In answer to the plaintiff's suit in ejectment, the defendant denied the plaintiff's title, and asserted his own.

Held, that, assuming the defendant to be the plaintiff's tenant, yet inasmuch as the defendant denied the plaintiff's title it was not necessary for the plaintiff to prove service of notice to quit on the defendant.

*The finding of an Appellate Court not accompanied by reasons is not conclusive.

THIS was a second appeal from the decision of F. Beaman, Assistant Judge of Ahmedabad, reversing the decree of Ráv Sáheb Lallubhái Pránvallabhdás Párekh, Joint Subordinate Judge of Ahmedabad.

The plaintiff alleged that he had let to the defendant's father a piece of land which the defendant wrongfully refused to vacate; that the plaintiff had applied to the Mámlatdár to recover possession of it, but the Mámlatdár refused his application. The plaintiff, therefore, prayed for a decree directing the defendant to vacate the land, and deliver it into the possession of the plaintiff.

*Second Appeal, No. 655 of 1883.

1885.

GOPÁLRÁO GANESH v. KISHOR KÁLIDÁS.

The defendant denied the plaintiff's title to the land, and asserted his own title and possession.

The Subordinate Judge, therefore, passed a decree in favour of the plaintiff, observing, with reference to service of notice to quit upon the defendant: "Serving six months' notice is necessary before ordering the ejectment of the defendant. However, no evidence has been given about serving the notice, and the defendant has not set up that plea. So I leave that question aside."

The District Judge reversed the decree of the Subordinate Judge. He was of opinion that the Subordinate Judge ought to have determined the question of notice. He said: "The lower Court has, practically, admitted that the defendant is the plaintiff's tenant, and the plaintiff was bound to give the defendant six months' notice to quit before instituting legal proceedings * * * *. Supposing the defendant was the plaintiff's tenant, the plaintiff cannot succeed in this suit, since he has not given the defendant the prescribed notice. If, on the contrary, it be held that the defendant was not the plaintiff's tenant, it will be necessary to examine the whole question of the relative validity of their respective titles. It has been ruled that the mere fact of a person having his name entered in the Collector's books does not prove his proprietary right to the land in respect to which his name is entered. I need only remark here that the balance of evidence, even upon the latter supposition, appears to me to be in favour of the defendant."

The plaintiff appealed to the High Court.

Máneksháh Jehángirsháh for the appellant.—The defendant has not admitted that he was a tenant, and is not, therefore, entitled to any notice. There is no necessity to end that which the defendant says had no existence. The defendant cannot contend that a contract, of which he denies the existence, has not been put an end to. That would be so even if the plaintiff sued the defendant as a tenant; but the plaintiff's suit in the present case is the ordinary one of ejectment against a trespasser.

Ganpat Sadáshiv Ráv for the respondent.—The lower Court

1885.

GOPÁLRÁO GANESH v. KISHOR KÁLIDÁS.

rejected the plaintiff's claim, first, because it thought notice was necessary; and, secondly, because it thought that the defendant's title was better on the evidence than the plaintiff's.

SARGENT, C.J.—The Assistant Judge has disposed of this case in favour of the defendant on two grounds: (1), that, assuming defendant to have been plaintiff's tenant, he could not be ejected without notice.

(2). That the evidence was, in his opinion, strongly in favour of defendant's proprietary right.

As the defendant has throughout denied the plaintiff's title, the plaintiff would be under no obligation to prove notice, supposing it to be established that defendant was his tenant. See Woodfall on Landlord and Tenant, (11th ed.), p. 325; *Doe d. Trustees of the Bedford Charity* v. *Payne*(1); *Vivian* v. *Moat*(2).

As to the opinion expressed by the Assistant Judge in favour of defendant's proprietary title, it is accompanied by no reasons, and cannot be accepted as a conclusive finding—*Krishnaráv Yashvant* v. *Vásudev Apáji Ghotikar*(3). We must, therefore, reverse the decree, and send the case back for a fresh decision. Costs of appeal to abide the result.

Decree reversed and case remanded.

(1) 7 Q. B., 287. (2) 16 Ch. Div., 730. (3) I. L. R., 8 Bom., 371.

ORIGINAL CIVIL.

Before Mr. Justice Pinhey.

DA'DA'JI BHIKA'JI, PLAINTIFF, *v.* RUKHMA'BA'I, DEFENDANT.*

1885. *September* 19 & 21.

Husband and wife—Restitution of conjugal rights—Suit by a husband—Marriage during wife's infancy—Non-consummation of marriage—Specific performance of contract of marriage made in infancy—Hindu law—Poverty of husband.

A, a Hindu aged nineteen years, was married by one of the approved forms of marriage to B, then of the age of eleven years, with the consent of B's guardians. After the marriage B lived at the house of her step-father, where A visited from time to time. The marriage was not consummated. Eleven years after the marriage, *viz.*, in 1884, the husband called upon the wife to go to his house and live

* Suit No. 139 of 1884.