

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice
Nánabhái Haridás.*

YESHVANT BAMBURA V AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS,
v. GOVIND SHANKAR, (ORIGINAL DEFENDANT), RESPONDENT.*

1886.

March 29.

Certificate of sale—Purchasers at successive execution sales—Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale—Priorities.

On the 9th December, 1876, the plaintiff purchased a house at an auction sale in execution of a decree against the owner, one Sultánsáheb. The sale was confirmed on the 9th January, 1877, but the certificate of sale was not issued until the 16th June, 1880. On the 20th January, 1880, the defendant purchased the same house at a sale in execution of a money decree against Sultánsáheb. That sale was confirmed on the 28th February, 1880, and a certificate was issued on 20th March, 1880. The defendant got possession from the judgment-debtor in April, 1880. The plaintiff now sued for possession. It was contended for the defendant that, having completed his title under the auction sale and obtained possession before the plaintiff had taken out his certificate, he had acquired a better title than the plaintiff.

Held, that the plaintiff was entitled to recover. By his prior purchase he had obtained an equitable interest in the property, although he had not obtained a sale certificate. The defendant, therefore, purchased subject to the plaintiff's equitable interest; and that title having subsequently been perfected by the issue of the certificate, the plaintiffs were in a position to sue for possession.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum.

At a Court sale held on the 9th December, 1876, in execution of a decree against one Sultánsáheb, the plaintiff's father purchased the house in dispute. The sale was confirmed on 9th January, 1877, but no certificate was issued until 16th June, 1880. In the meantime, at another Court sale in execution of another decree against Sultánsáheb, the defendant purchased the same house on 20th January, 1880. The sale was confirmed on 28th February, 1880, a certificate was issued on 20th March, 1880, and the defendant obtained possession of the house from the judgment-debtor in April of the same year.

* Second Appeal, No. 705 of 1883.

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The plaintiff, being obstructed in his attempt to take possession under his earlier purchase, brought this suit against the defendant, who contended that he had a better title, he having completed his title under the auction sale and obtained possession before the plaintiff had obtained his sale certificate.

The Subordinate Judge of Chikodi dismissed the plaintiff's suit, and his decree was confirmed by the lower Appellate Court.

The plaintiff preferred a second appeal to the High Court.

Ganesh R. Kirloskar for appellants:—The plaintiff's purchase was prior to that of the defendant, and the circumstance that he obtained his sale certificate after the defendant had obtained one, does not affect his title. The defendant as an auction-purchaser cannot plead purchase for value without notice. A judicial sale is valid, though the purchaser of it does not obtain possession thereunder—*Lakshmandás Sarupchand v. Dasrat*⁽¹⁾; *Sobhāgchand Gulābchand v. Bhāichand*⁽²⁾. Under section 259 of Act VIII of 1859 it was held that the title of the Court purchaser vested in him from the date of sale—*Bhyrub Okhunder Bundopadhya v. Soudāmini Dabee*⁽³⁾; *Shivrām Nārāyan Mekal v. Rāvji Sakhārām Pradhān*⁽⁴⁾. By a Court sale the property passes absolutely to the purchaser, so that he can assign it—*Govinda Raghunāth v. Govinda Jagoji*⁽⁵⁾.

Ghanashām Nīlkanth Nādkarni for respondent:—The title of a purchaser at a Court sale is complete on his obtaining a sale certificate; till then it is imperfect—*Lālūhāi Lakhmidās v. Navāl-Mīr Kamāludīn Husen*⁽⁶⁾. The sale took place while the old Act was in force. At the time of defendant's purchase the plaintiff had got no interest in the property. The plaintiff was the decree-holder and himself the purchaser, and should not have remained silent so as to lead other persons to believe that the property was still judgment-debtor's. Section 316 of Act X of 1877 does not apply. The plaintiff not having obtained possession from the judgment-debtor left in him a good title. The plaintiff ought to have applied within three years from his purchase.

(1) I. L. R., 6 Bom., 168.

(2) I. L. R., 6 Bom., 193.

(3) I. L. R., 2 Cale., 141.

(4) I. L. R., 7 Bom., 254.

(5) I. L. R., 1 Bom., 500.

(6) 12 Bom. H. C. Rep., 247.

SARGENT, C.J.—The plaintiff seeks to obtain possession of a house which his undivided brother, Bábúráv, deceased, purchased at an auction sale on the 9th December, 1876, in execution of a decree against the owner, one Sultánsáheb. The sale was confirmed on 9th January, 1877, but the certificate of sale was not issued until 16th June, 1880. The defendant also claims as a purchaser at an auction sale on 20th January, 1880, in execution of a money decree obtained by one Ráchápá against Sultánsáheb. The sale was confirmed on 28th February, 1880, and certificate issued on 20th March, 1880, and the defendant got possession from the judgment-debtor in April, 1880. It was contended for the defendant that, having completed his title under the auction sale and obtained possession before the plaintiff had taken out his certificate, he acquired a better title than the plaintiff. However this might be, if the parties had purchased by private contract from Sultánsáheb, and the defendant's purchase had been without notice of the previous sale to plaintiff, the Full Bench case—*Sobhúgchand v. Gulábchand* ⁽¹⁾—is a distinct authority that a purchaser at auction sale under a money decree cannot claim as a purchaser for value. That decision proceeds on the ground that the Court only offers for sale and the purchaser only acquires the "right, title, and interest" which were vested in the judgment-debtor at the time of the sale, and, therefore, takes the property subject to all the equities attaching to it as against the judgment-debtor. Now that the purchaser at auction had an equitable interest in the house, although he had not obtained a certificate, is shown by the judgments in *Krishnáji Ráji v. Ganesh Bápuji* ⁽²⁾ and *Ráj Krishna Mookerji v. Rádhá Madhub* ⁽³⁾, where it was held by Westropp, C. J., and Couch, C. J., that, under Act VIII of 1859, which was the Code of Civil Procedure in force when the plaintiff purchased, although the certificate may not have been issued, the auction-purchaser, whose purchase has been confirmed, obtains a complete equitable title as against the judgment-debtor. Whether this ruling is affected by the language of the present Code, it is not necessary at present to consider. The defendant, therefore, purchased subject to the

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(1) I. L. R., 6 Bom., 193.

(2) I. L. R., 6 Bom., 130.

(3) 21 Calc. W. R., Civ. Rul., 351.

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plaintiff's equitable interest in the land, and that title having been since perfected by the issue of the certificate, the plaintiff is now in a position to sue for possession; and as the defendant has not acquired a title by adverse possession, he has, in our opinion, no valid defence to plead to the plaintiff's action, unless perhaps, (as to which we express no opinion), if it should prove that the proceedings in connection with the sale certificate to plaintiff were fraudulent, as to which no finding has been recorded in either Court. We have already expressed an opinion at the hearing, that the plaintiff was under no obligation to proceed under section 263 of Act VIII of 1859—*Patlu v. Ravji*⁽¹⁾. We must, therefore, send down the case for a finding on the first issue raised by the Subordinate Judge; the finding to be transmitted to this Court within two months. The parties to be allowed to give fresh evidence.

Case sent down.

(1) Printed Judgments for 1885, p. 85.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nānābhāi Haridds.

BAI UJAM AND ANOTHER, (ORIGINAL PLAINTIFFS), APPELLANTS, v.

VALJI RASULBHAI, (ORIGINAL DEFENDANT), RESPONDENT.*

1886.

April 21.

Jurisdiction—Act V of 1879, Secs. 119 and 121, fixing of boundaries under—Boundaries, effect of decision of revenue authorities as to—Meaning of the term "determinative".

In 1877 a dispute arose between plaintiffs and defendant as to the boundaries of certain land, being survey Nos. 88 and 87, of which the plaintiffs and the defendant were respectively occupants under Government. In 1879 the boundaries were fixed by a revenue officer under the orders of the Collector, and the piece of land in dispute was found to belong to the plaintiffs as occupants of survey number 88. Subsequently, the defendant having encroached upon it and dispossessed the plaintiffs, the present suit was filed. The Court of first instance awarded the plaintiffs' claim, holding that the decision by the revenue officer was conclusive as to the boundary. The defendant appealed, and the lower Appellate Court reversed the lower Court's decree. On appeal by the plaintiffs to the High Court,

Held, restoring the decree of the Court of first instance, that, under the provisions of section 121 of Act V of 1879, the decision of the Collector as to the boundaries was conclusive, and that the plaintiffs were entitled to possession.

* Second Appeal, No. 216 of 1884.