

APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Jardine.

1886.
March 11.

NAIGAR TIMA'PA', (ORIGINAL PLAINTIFF), APPELLANT, v. BHA'SKAR PARMAYA AND ANOTHER, (ORIGINAL DEFENDANTS), RESPONDENTS.*

Civil Procedure Code (Act X of 1877), Secs. 273, 274, 316—Sale of a decree for redemption—Necessity of a certificate of sale under Act X of 1877 to perfect the title of an auction-purchaser.

Section 273 of the Civil Procedure Code (Act X of 1877) having expressly provided a mode for the attachment of decrees, the procedure laid down in section 274 relating to immoveable property has no application to the attachment of a decree for redemption.

Under section 316 of the Civil Procedure Code (Act X of 1877) the title of a purchaser at a Court sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to prove that fact.

Pándu Malhári v. Rakhmái(1), *Lálbhái Lakhmídás v. Navál Mir Kamdludín Husen*(2), and *Harkísandás Nárándás, v. Báí Ichhá*(3) referred to and distinguished.

SECOND appeal from the decision of Satyendranáth Tágore, District Judge of Kánara, confirming the decree of Ráv Sáheb Vishvanáth Vaikunth Wág, Subordinate Judge of Sírsi.

The land in dispute originally belonged to one Rámchandra Subáya, who mortgaged it to the first defendant, Bháskar. Rámchandra brought a suit for redemption, and obtained a decree, declaring him entitled to recover possession of the land upon payment of the mortgage-debt. This decree was attached in execution of a money decree against Rámchandra, and purchased at the Court sale by the plaintiff in 1879 before Act XII of 1879 came into force. Thereupon the plaintiff without obtaining the sale certificate applied for execution of the decree. His application was successfully opposed by the second defendant, who was sub-mortgagee under the first defendant. The plaintiff then filed the present suit to establish his right under the decree to redeem the mortgaged property.

* Second Appeal, No. 137 of 1884

(1) 10 Bom. H. C. Rep., 435.

(2) 12 Bom. H. C. Rep., 247.

(3) I. L. R., 4 Bom., 155.

Both the lower Courts rejected the plaintiff's claim on two grounds: first, because the decree purchased by the plaintiff, being in the nature of immovable property, ought to have been attached and sold according to the provisions of the Civil Procedure Code (Act X of 1877) relating to immovable property, and not as moveable property; secondly, because the plaintiff not having obtained a certificate of sale, was not entitled to redeem the property.

The plaintiff preferred a second appeal to the High Court.

Naráyan Ganesh Chandivarkar for the appellant:—The decree purchased by the plaintiff was not immovable property within the meaning of section 274 of Act X of 1877, any more than a deed of gift, mortgage, or sale of land is in itself immovable property. Section 273 of the Code of Civil Procedure (X of 1877) expressly provides for the attachment of decrees, whether they be money decrees or decrees creating any interest in land. In the face of this distinct provision, the procedure laid down for the attachment of immovable property does not apply. The sale of the decree, therefore, is perfectly valid. Even assuming that the decree ought to have been attached under section 274 as immovable property, the omission amounts, at the most, to a material irregularity; but it is not shown that this irregularity has caused any substantial injury. Neither the decree-holder, nor the judgment-debtor, nor the respondents objected to the sale. They are, therefore, estopped from disputing the validity of the sale—*Shaligrám v. Hanmatráam Jannádás*⁽¹⁾.

Secondly, the production of a certificate of sale was not necessary to entitle the plaintiff to sue. Section 316 of Act X of 1877 differs materially from section 259, (the corresponding section), of the former Code (Act VIII of 1859). And if it is compared with the same section of the present Code (Act XIV of 1882) the difference becomes still more apparent. Under the present Code, "the title to the property sold vests in the purchaser from the date of the certificate of sale, and not before." This provision is not found in section 316 of Act X of 1877. It is, therefore, plain that, under Act X of 1877, the purchaser

(1) Printed Judgments for 1882, p. 149.

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acquired a title independent of the certificate of sale. When the sale was confirmed, his title was completed. The certificate of sale was merely evidence of the sale, not a muniment of title.

Shámráv Vithal for respondents:—The decree for redemption affects immovable property. What the plaintiff has bought is not a mere paper, but the equity of redemption established by the decree. The sale of the decree is, therefore, substantially a sale of an interest in immovable property. Therefore, the provisions of the Code relating to immovable property apply to the attachment and sale of such a decree—*Mísammát Bhawani Kuar v. Guláb Raí*⁽¹⁾; *Srináth Dutt v. Gopál Chundra Mittra*⁽²⁾; *Appásami v. Scott*⁽³⁾; *Hari G. Joshi v. Rámchandra P. Joshi*⁽⁴⁾. The attachment of the decree as movable property being irregular and defective, the sale is not simply voidable but void—*Máhádeo Dubey v. Bholómáth Dichtá*⁽⁵⁾, and *Fida Husain v. Kutub Husain*⁽⁶⁾. As to the certificate of sale, this Court has frequently held that a certificate is necessary to complete the title of the auction-purchaser or to entitle him to sue—*Pándu Malhári v. Rahmáí*⁽⁷⁾; *Lálibháí Lakshmídás v. Navál Mir Kamátudin Husen*⁽⁸⁾; and *Harkisandás Nárandás v. Bái Fehhá*⁽⁹⁾.

NA'NA'BHA'I HARIDA'S, J. :—The admitted facts in this case are as follows :—

One Rámchandra mortgaged the land in dispute to the first defendant, Bháskar. In a suit for redemption, Rámchandra obtained a decree, declaring him entitled to obtain possession of such land from the said defendant on payment of a certain amount found to be due on the mortgage.

This decree was sold in execution of a money decree against Rámchandra, and purchased by the plaintiff, Naigar, for Rs. 50. The sale was in 1879, while Act X of 1877 was in force, and before the amending Act (XII of 1879) came into operation. To this sale, no objection whatever appears to have been made

(1) I. L. R., 1 All., 348.

(5) I. L. R., 5 All., 86.

(2) I. L. R., 9 Calc., 511.

(3) I. L. R., 7 All., 38.

(3) I. L. R., 9 Mad., 5.

10 Bom. H. C. Rep., 435.

(4) 9 Bom. H. C. Rep., 64.

12 Bom H. C. Rep., 247.

I. L. R., 4 Bom., 155.

either by the creditor or by the judgment-debtor, Rámchandra. It may, therefore, be taken that the purchase-money was paid, and the sale became absolute.

The plaintiff, thereafter, applied for execution of the decree so purchased by him, when he was opposed by the second defendant, who is a sub-mortgagee under the first defendant. His objection prevailed in the execution proceeding. Hence this suit.

Both the defendants have raised the same defence, and appeared by the same pleader in this Court. That defence is that the sale by the Court was absolutely void, and conveyed to the plaintiff no title whatever, because the decree for redemption, being in the nature of immovable property, ought to have been sold under the provisions of Act X of 1877, relating to such property, and not as movable property. Both the lower Courts have taken this view, and rejected the plaintiff's claim, with costs. The papers in the execution proceeding have not been recorded in this case to show what was actually done before the sale took place; but Mr. Shámráv, for the defendants, urges here that the decree sold was not attached in the manner provided for the attachment of immovable property in section 274 of the Civil Procedure Code (X of 1877), and that, therefore, the sale was invalid. But that section, it seems to us, had no application, the previous section (273) having expressly provided a mode for attachment of decrees, and it is not denied that such mode was adopted in this case. But, assuming that in the attachment or sale of the decree here something was omitted to be done which ought to have been done under the Code, it does not follow that the sale was necessarily bad on that account, and would convey no title to the purchaser. The omission would, at most, amount to "a material irregularity," such as might entitle "the decree-holder or any person whose immoveable property has been sold" to apply "to the Court to set aside the sale" on that ground, under section 311 of the Civil Procedure Code (Act XIV of 1882). But, in this case, both the decree-holder (Rámchandra's creditor) and Rámchandra, the owner of the property sold, were satisfied with the sale, neither having objected to it, and the sale, accordingly, became absolute, the purchase-money being paid over to the

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creditor, and Rámchandra's debt to him thus discharged *pro tanto*. It would not now lie in Rámchandra's mouth to say that the property sold had not passed to the purchaser; and the defendants, who claim only as mortgagees under Rámchandra, are bound, on payment of the mortgage debt found to be due, to restore the property to Rámchandra's assignee, the plaintiff. The defendants could not have refused to do so if Rámchandra had privately sold the decree to the plaintiff and informed them of such sale; and the fact, that the sale here was by the Court instead, can make no difference in the plaintiff's right or the defendants' obligation.

But it is urged the plaintiff has obtained no certificate of sale from the Court. None is produced in this case, and from the non-denial of the defendants' allegation in this respect we may assume that such was the case. It does not, however, affect the question of the plaintiff's right in this case. The fact of the sale to him by the Court is admitted by the defendants, whose only objection is as to its validity. The production of a certificate, therefore, was not necessary to prove that fact. The plaintiff's title became complete, under the Code of 1877, upon his payment of the purchase-money and confirmation of the sale by the Court. Our attention is called to *Pánu Malhári v. Rakhmai*⁽¹⁾, *Lálbhái Lakhmídás v. Navol Mir Kamúludin Husen*⁽²⁾, and *Harkisandás Nárandás v. Báí Ichhí*⁽³⁾ to show the necessity of a certificate of sale at the date of the suit; but they were cases governed by section 259 of Act VIII of 1859, and not by section 316 of Act X of 1877, like the present.

The decrees of the lower Courts must, therefore, be reversed, and the plaintiff's claim allowed, with costs throughout.

Decree reversed with costs.

⁽¹⁾10 Bom. H. C. Rep., 435.

⁽²⁾12 Bom. H. C. Rep., 247.

⁽³⁾1 L. L. R., 4 Bom., 155.