

APPELLATE CIVIL.

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

1887.
February 10.

CHINTA'MANRA'V NA'TU, (ORIGINAL DEFENDANT), APPELLANT, *v*
VITHA'BA'I, (ORIGINAL PLAINTIFF), RESPONDENT.*

*Decree—Sale in execution—Interest of purchaser—Certificate of sale unregistered—
Second sale of same property in execution of subsequent decree—Interest of pur-
chaser at such subsequent sale subject to interest of purchaser under prior sale—
Registered certificate of second sale—Act VIII of 1859—Civil Procedure Code
(XIV of 1882), Sec. 294—Purchase by decree-holder at execution sale—Right to
set aside such purchase—Limitation.*

In 1884 the plaintiff brought the present suit against the defendant to recover possession of a certain house which he had purchased at a sale held on the 15th March, 1880, in execution of a money-decree obtained against one Chintáman Dámodar. He obtained a certificate of sale on the 3rd January, 1880, which was registered on the 13th of the same month. The defendant had previously purchased the same property at a sale held on the 22nd November, 1875, in execution of a decree obtained by him as mortgagee against the said Chintáman. The defendant had obtained a certificate of sale, and was put into possession, but had not then registered the certificate. He subsequently obtained another certificate, which was registered in June, 1882. In a suit by the plaintiff for possession,

Held, that the plaintiff could not recover. The defendant had acquired, under the Civil Procedure Code (Act VIII of 1859) by the sale and the confirmation of it, a beneficial interest, and the plaintiff by his subsequent purchase in execution of a money-decree against Chintáman took subject to that interest. The grant to the defendant of the second certificate, which was registered, sufficiently proved that the sale to him had been confirmed.

It was contended that, under section 294 of the Civil Procedure Code (Act XIV of 1882), the defendant took nothing by his purchase, as he was the holder of the decree in execution of which the property was sold.

Held, that this objection could not now be made, as the right of the judgment-debtor (Chintáman) and of the plaintiff, as purchaser of his rights, to have the defendant's purchase set aside on this ground, had been barred by limitation long before this suit was brought. The purchase by the defendant was not void *ab initio*, but only voidable "on the application of the judgment-debtor or other person interested in the sale." Further, such an application was a matter in execution falling under section 244 of the Civil Procedure Code (Act XIV of 1882), and, therefore, even if not barred before the passing of the Limitation Act XV of 1877, would be barred by article 178 of that Act not later than 1st October, 1880.

THIS was an appeal from a decision of E. T. Candy, District Judge of Poona.

* Appeal, No. 6 of 1886.

On the 22nd November, 1875, the defendant (appellant), as mortgagee of a certain house, obtained a decree against his mortgagor, one Chintáman Dámodar, upon the mortgage, and sold the mortgaged property in execution. At the sale he himself purchased the property, obtained a certificate of sale from the Court, and was put into possession. He, however, omitted then to register his certificate. He subsequently obtained another certificate, which he registered in June, 1882.

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In the meantime another creditor had obtained a money-decree against the said Chintáman, and in execution thereof sold the said property on the 15th August, 1880. At this sale the plaintiff purchased the property, and on the 3rd July, 1880, he obtained a sale certificate, which he registered on the 13th of the same month.

In 1884 the plaintiff brought the present suit to obtain possession of the property from the defendant.

The Subordinate Judge of Poona dismissed the plaintiff's suit.

The plaintiff appealed, and the District Judge reversed the lower Court's decree, and remanded the case.

The defendant preferred an appeal to the High Court.

Mahádev Chimnaji A'pte for the appellant.

Inverarity (Mahádev Bháskar Chaubal with him) for the respondent.

SARGENT, C. J. :—The plaintiff is the purchaser at auction-sale, under a money-decree obtained by one Sitábái against one Chintáman Dámodar, of the property specified in the plaint, on the 15th March 1880, and obtained a certificate of sale on the 3rd July, 1880, which was registered on the 13th. The defendant claims to have purchased the same property on the 22nd November, 1875, in execution of a decree obtained by him as mortgagee under the said Chintáman. The defendant obtained a certificate, and was put into possession by the Court, but the certificate was not registered. The District Judge, relying on the language of section 316 of the Civil Procedure Code (Act XIV of 1882), held that no rights vested in the defendant until June, 1882, when he got a second certificate of his sale, and had it registered. But the real question is, what was the interest which the defendant ac-

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quired by his purchase in 1875? According to the ruling in *Yeshwant Báburáv v. Govind Shankar*⁽¹⁾, the defendant acquired, under the Act VIII of 1859, by the sale and confirmation of it, a complete interest as against Chintáman; and the plaintiff by his subsequent purchase in execution of a money-decree against Chintáman took subject to that interest, as was decided in the Full Bench decision *Sobhágchand v. Bháichand*⁽²⁾. It was urged, however, before us that there was no evidence before the Court that the sale had been confirmed. But that is sufficiently proved by the grant of the second certificate, which has been registered, and is in evidence. Lastly, it has been urged that as the defendant was the holder of the decree, in execution of which the property was sold, he took nothing by the purchase, having regard to section 294 of the Civil Procedure Code; but such a purchase would not be void *ab initio*, but only voidable "on the application of the judgment-debtor or other person interested in the sale," as appears from the latter part of the section. See *Jawherbái v. Haribhái*⁽³⁾. Again in *Viraraghava v. Venkata*⁽⁴⁾ it was held, and we agree with that decision, that such an application was a matter in execution, falling under section 244 of the Civil Procedure Code, and, therefore, even if not barred before the passing of Act XV of 1877, would be barred by article 178 of that Act, at any rate not later than the 1st October, 1880. The right, therefore, of the judgment-debtor and of the plaintiff, as purchaser of his rights, to have the defendant's purchase set aside, had been barred long before this suit was brought.

We must, therefore, reverse the remand order of the Court below, and restore the decree of the Subordinate Judge dismissing the plaintiff's claim. Plaintiff to pay defendant his costs of this appeal and in the lower Appellate Court.

Order reversed.

(1) I. L. R., 10 Bom., 453.

(3) I. L. R., 5 Bom., 575.

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

(4) I. L. R., 5 Mad., 217.