

APPELLATE CIVIL.

Before Sir Charles Sargent Kt., Chief Justice, and Mr. Justice Clerk.

ALI SA'HEB, (ORIGINAL DEFENDANT No. 7), APPELLANT, v. KA'JI AHMAD, (ORIGINAL PLAINTIFF), RESPONDENT.*

1891.

April 14.

Limitation Act (XV of 1877), Section 3—Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction sale—Suit by a true owner to recover possession—Adverse possession.

The purchaser at an auction sale acquires the right, title and interest of the judgment-debtor and, in virtue of that, is put in possession by reason of which he becomes liable to be sued by the true owner. He, therefore, derives such liability within the contemplation of section 3 of the Limitation Act (XV of 1877) from or through the judgment-debtor.

R., the owner of sixty-two thikáns, had mortgaged fourteen of them to M. Subsequently to the mortgage to M., *viz.*, on the 7th December, 1871, R. sold the sixty-two thikáns to the plaintiff but did not give up possession. On the 18th June, 1872, the sixty-two thikáns were sold in execution of a decree against R. and were purchased at the auction sale by A., who redeemed the fourteen thikáns from the mortgage. On the 7th December, 1883, the present suit was filed by the plaintiff to recover possession against the heirs of R. and M. On the 17th January, 1884, A. was joined as a co-defendant to the suit.

Held, that the plaintiff's claim against A. was time-barred with respect to the forty-eight thikáns which were not mortgaged, A. being entitled to add to the period of his possession that of R., who had remained in possession after the sale to the plaintiff.

SECOND appeal from the decision of R. S. Tipnis, Acting Assistant Judge of Ratnágiri.

The plaintiff sued for possession of certain land comprising sixty-two thikáns, which he alleged had been sold to him by one Rámchandra on 7th December, 1871, but of which he had never possession.

This suit was filed on the 7th December, 1883; and the original defendants were the heir of the vendor and a mortgagee (defendant 6) to whom Rámchandra had mortgaged fourteen thikáns. The appellant Ali Sáheb was subsequently, *vis.*, on 17th January, 1884, made a defendant to the suit. He alleged that on the 18th June, 1872, he had purchased the sixty-two

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thikáns at a sale held in execution of a decree against Rámchandra; that he had thereupon redeemed the fourteen thikáns from the mortgage of defendant No. 6, and that he had held possession ever since. He contended that the suit was barred by limitation.

The District Judge gave a decree for the plaintiff, and the appellant Ali Sáheb (defendant No. 7) appealed to the High Court.

Latham (Advocate-General) with *Máneksháh Jahángirsháh* for appellant (defendant No. 7):—We say the plaintiff's claim against us is barred by limitation; our title by adverse possession is complete; article 144 of the Limitation Act XV of 1877.

The plaintiff alleges he bought the lands from Rámchandra on the 7th December, 1871, but he never got possession from his vendor. The vendor remained in possession, and that possession was adverse to the plaintiff. The appellant (defendant No. 7) purchased Rámchandra's interest on the 18th June, 1872, and got possession. He is entitled to add Rámchandra's time to his own, as it was from Rámchandra he derived his liability to be sued. See Limitation Act, article 144, and see definition of "defendant" in section 3. The appellant's title is good therefore by reason of adverse possession. As regards the fourteen mortgaged thikáns, he has paid off the mortgage and stands in the position of mortgagee—*Gossain Dass Chunder v. Issur Chunder Nath*⁽¹⁾, *Peary Mohun Chowdhry v. Romesh Chunder*⁽²⁾, *Padajiráv v. Rámráo*⁽³⁾.

Branson (with *Vásudev Gopál Bhandárkar*) for respondent:—The appellant (defendant 7) has not had possession for twelve years and our claim is not barred. He is not entitled to add Rámchandra's time to his own. The appellant (defendant 7) does not come within the definition of a defendant. He bought at a Court-sale and did not derive title "from or through" the judgment-debtor. The word "from" in section 3 of the Limitation Act (XV of 1877) refers to private alienation and "through" refers to cases of inheritance. The right to sue a purchaser at a

(1) I. L. R., 3 Calc., 224.

(2) I. L. R., 15 Calc., 371.

(3) I. L. R., 13 Bom., 160.

Court-sale accrues when he gets his certificate of sale and when he is put into possession by the Court, and not before—*Anundo Moyee Dossee v. Dhonendro Chander Mookerjee*⁽¹⁾; *Dinendronath Sannyal v. Ramcoomar Ghose*⁽²⁾. The appellant is therefore not entitled to add the time of his possession to that of Rámchandra. Further, the judgment-debtor Rámchandra had no saleable interest at the time of the auction sale to the appellant, because all his right, title and interest in the property had passed to us under our prior purchase.

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SARGENT, C. J. :—The plaintiff claims under a deed of sale of 62 thikáns from the original owner Rámchandra, dated 7th December, 1871, of which 14 had been previously mortgaged to defendant No. 6, and defendant No. 7 (the appellant) purchased on 18th June, 1872, at auction sale in execution of a decree against Rámchandra, and redeemed 14 thikáns. The present suit was filed on 7th December, 1883, against Rámchandra, and defendant No. 7 was made a party-defendant on 17th January, 1884.

The only question for consideration is whether the lower Court was right in holding that the suit was not barred as regards the defendant No. 7 with respect to the thikáns which were not mortgaged. This would be so if defendant No. 7 cannot add on his possession to that of Rámchandra, who remained in possession after his sale to plaintiff, and this depends on the "construction" to be placed on section 3 of the Statute of Limitations, where defendant is defined to include "any person from or through whom a defendant derives his liability to be sued."

The purchaser at an auction sale acquires the right, title and interest of the judgment-debtor, and in virtue of that is put into possession, by reason of which he becomes liable to be sued by the true owner. He therefore, we think, derives such liability within the contemplation of section 3 from or through the judgment-debtor. No doubt in *Dinendronath Sannyal v. Ramcoomar Ghose*⁽²⁾, the Privy Council remark that the purchaser at auction sale "derives title by operation of law adversely to the judg-

(1) 14 Moore's L. A., 101.

(2) 8 L. A., 65, 75.

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ment-debtor"; but although the title is derived from the judgment-debtor against his will, the purchaser's liability to be ejected none the less arises from the title which he has derived from the judgment-debtor.

We must, therefore, reverse the decree and dismiss the plaint so far as the thikáns which were not mortgaged are concerned. Appellant to have his proportionate costs throughout.

Decree reversed.

CRIMINAL JURISDICTION.

Before Mr. Justice Farran.

1891.

July 2.

THE QUEEN EMPRESS v. JAMES INGLE.

Practice—Procedure—Jurisdiction—Prisoner charged with two offences one of which was committed outside jurisdiction—Objection taken before Magistrate—Subsequent objection taken at Sessions under Section 532 of Criminal Procedure Code—Commitment—Criminal Procedure Code (X of 1882), Secs. 531, 532.

The accused was charged under section 498 of the Penal Code (XLV of 1860) with having enticed away a married woman and under section 497, with having committed adultery. The woman, alleged to have been enticed away, resided in Bombay, but the alleged adultery took place at Khandála, outside the jurisdiction. At the enquiry before the Magistrate in Bombay, objection was taken to his jurisdiction with regard to the charge of adultery. The Magistrate, however, overruled the objection and committed the accused for trial.

At the trial an application was made, on behalf of the accused, under section 532 of the Criminal Procedure Code (X of 1882), that the commitment should be quashed and a fresh enquiry directed on the ground that an objection had been taken to the Magistrate's jurisdiction.

Held, refusing the application, that the commitment being an order (see *Queen Empress v. Thakur*⁽¹⁾) under section 531 of the Criminal Procedure Code, the commitment should not be quashed unless a failure of justice would be caused by proceeding with the trial.

THE prisoner was charged, under section 498 of the Indian Penal Code (XLV of 1860), with having, on the 5th November, 1890, enticed away a married woman, and, under section 497, with having committed adultery. The married woman, with respect to whom