

of the certified copy of the lease in question by the present respondent, the lower Appellate Court ought not to have allowed it to be taken in that Court. The first Court was satisfied that a case had been made out for the admission of this document as secondary evidence, and admitted it without objection by [158] the present appellant, and the suit proceeded. The authorities in this Court establish that, if no objection has been taken in the Court below, under such circumstances as the present, the objection should not be allowed in the Appellate Court. If the case just cited to us, *Kameshwar Pershad v. Amanutulla* (1) lays down an opposite view, with every respect I dissent.

The case must go back with the intimation of our opinion that, under the circumstances, the certified copy of the lease in question was properly admitted, and the case must be heard having regard to it. What the effect of the lease may be we cannot say.

It was conceded by the appellant that the appeal as regards Kedar's share must be dismissed with proportionate costs.

The rest of the case must, therefore, go back and the proportionate costs of that part of the appeal will abide the result.

GEIDT, J. I concur.

Case remanded.

31 C. 159 (=8 C. W. N. 657.)

[159] APPELLATE CIVIL,

Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and Mr. Justice Geidt.

GOBINDA CHANDRA SHAHA v. HEMANTA KUMARI DEBI.*

[19th August, 1903.]

Parties—Sale for arrear of revenue, suit to set aside—Secretary of State, whether necessary party—Public Demands Recovery Act (B. C. I. of 1895) ss. 7, 8.

In a suit to set aside a sale held under the provisions of the Public Demands Recovery Act, the Secretary of State for India in Council is a necessary party.

Bal Mokoond Lall v. Jirjudhun Roy (2) and *Balkishen Das v. Simpson* (3) distinguished.

[Dist. 32 C. 1130=1 C. L. J. 542 ; 1. I. C. 313.]

SECOND APPEAL by the plaintiffs, Gobinda Chandra Shaha and others.

This appeal arose out of an action brought by the plaintiff to set aside a sale held under the provisions of the Public Demands Recovery Act (B. C. I. of 1895). The allegations of the plaintiff were that no part of the amount for which the certificate was issued was due by the judgment-debtors ; that no notice under section 10 of the Public Demands Recovery Act was served on them ; that the sale proclamation was not published, and that they thereby sustained substantial injury ; and that the property which was worth about Rs. 500 was purchased by defendant No. 1 who was one of the judgment-debtors in the certificate originally made by the certificate officer, for Rs. 15 only.

* Appeal from Appellate Decree No. 396 of 1901 against the decree of Akhoy Kumar Banerjee, Subordinate Judge of Faridpur, dated Nov. 30, 1900, reversing the decree of Jadab Chandra Sen, Munsif of Bhanga, dated Jan. 6, 1900.

(1) (1898) I. L. R. 26 Cal. 53.

(2) (1882) I. L. R. 9 Cal. 271.

(3) (1898) I. L. R. 25 Cal. 893 ; L. R.

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The Secretary of State for India in Council was not made a party-defendant to the suit.

The defence *inter alia* was, that the Secretary of State for India in Council should have been made party to the suit ; that the suit was barred by limitation ; and that the certificate under which the property was

sold was lawfully made.

[160] The Court of first instance dismissed the suit as regards plaintiffs Nos. 1 and 2, holding that they could not get the sale set aside, without first setting aside the certificate and that their right to get the certificate set aside was barred by limitation ; but it decreed the suit as regards the two-anna share of the plaintiff No. 3, holding that the certificate did not bind her share of the property. Against that decision plaintiffs Nos. 1 and 2, as well as the defendant No. 1, preferred two separate appeals to the Subordinate Judge. The learned Judge dismissed the appeal of the plaintiffs, but decreed that of the defendant No. 1, holding that the Secretary of State for India in Council was a necessary party to the suit.

Babu *Priya Nath Sen*, for the appellant, contended that the Secretary of State for India in Council was not a necessary party, and relied on the cases of *Bal Mokoond Lall v. Jirjudhun Roy* (1) and *Balkishen Das v. Simpson* (2) ; he submitted that although these two cases related to sales for arrears of revenue, while in the present case the sale was held for arrears of cesses, that did not make any difference in principle, inasmuch as the interest of the Secretary of State in both these classes of cases was exactly of the same character. It was true that the Secretary of State occupied the position of a decree-holder on a certificate issued for arrears of public demands, but that was only as regards the remedies for enforcing the same : see section 8, Act I of 1895 (B. C.). Then assuming that the Secretary of State was a necessary party in an ordinary suit to have a sale for arrears of public demands set aside still he was not a necessary party to the present suit, as it was based upon the allegations that the defendant No. 1 had fraudulently caused the suppression of the sale proclamation, and purchased the estate at an inadequate price taking advantage of that fraud, and that the share of the plaintiff No. 3 could not be affected inasmuch as the certificate was not issued against her. On the basis of those allegations the suit might be treated as a suit to have it declared that the defendant No. 1 who purchased the estate could not take advantage of his fraud, and should be treated as a [161] trustee on behalf of the original owners, and that the sale, even if it stood confirmed, could not affect the interest of the plaintiff No. 3. To such a suit the Secretary of State, even if he occupied the position of an ordinary decree-holder, was not a necessary party, for those declarations could be made without setting aside the sale.

Babu *Baikuntha Nath Das*, for the respondent, was not called upon.

MACLEAN, C. J. The Court below was right in holding that the Secretary of State for India in Council was a necessary party to the suit. It is a suit to set aside a sale effected under the provisions of the Public Demands Recovery Act (B. C. I. of 1895). Under section 8 of that Act, the Secretary of State for India in Council shall be deemed to be the decree-holder, and in all cases therein mentioned, the person named in the certificate as debtor shall be deemed to be the judgment-

(1) (1882) I. L. R. 9 Cal. 271.

(2) (1898) I. L. R. 25 Cal. 838 ; L. R. 25 I. A. 851.

debtor. The judgment-debtor brings this suit to set aside the sale effected under that statute. It is the long established practice of this Court in suits of this class to make the decree-holder, who is deeply interested in the matter, a party to the suit. In the present case as has been pointed out, the Secretary of State for India in Council must be regarded as the decree-holder, and I, therefore, think that he is a necessary party to the suit. In the case of *Bal Mokoond Lall v. Jirjudhun Roy* (1) and that of *Balkishen Das v. Simpson* (2), the sales were sales under the Revenue Sale Law (Act XI of 1859), and there is no such provision in that Act, as there is in the Public Demands Recovery Act, viz., that the Secretary of State for India in Council is to be deemed the decree-holder.

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This is the only ground of appeal : it fails, and the appeal must be dismissed with costs.

GEIDT, J. I concur.

Appeal dismissed.

31 C. 162.

[162] APPELLATE CIVIL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice,
and Mr. Justice Geidt.*

GOPI NATH CHOWDHRY v. BENODE LAL ROY CHOWDHRY.*

[17th August, 1903.]

Security Bond—Assignment of Security bond—Assignee of Security bond, rights of—Suit on Security bond—Civil Procedure Code (Act XIV of 1882), s. 346.

The assignee of a security bond, which was given to a District Judge under s. 349 of the Code of Civil Procedure for the production of a judgment-debtor when called upon to appear, is entitled to maintain an action upon that bond.

Mingale Antone Kane v. Ramchandra Baje (3) referred to.

[Ref. 7. I. C. 917=12 C. L. J. 419.]

SECOND APPEAL by the defendant, Gopi Nath Chowdhry.

This appeal arose out of an action brought by the plaintiffs to recover a certain sum of money upon the basis of a security bond. The allegation of the plaintiffs was that they, as decree-holders, in execution of their decree got one Dwarka Nath Roy arrested and put into jail ; that while in jail Dwarka Nath applied for insolvency and moved the District Judge of Dacca to be set at liberty on bail ; that the District Judge ordered that he could be released on furnishing a security bond for Rs. 3,500 ; that on the 25th February 1898, the defendant executed in favour of the District Judge a security bond for that amount, undertaking to produce Dwarka Nath Roy whenever called upon to do so by the District Judge, making himself liable to pay a fine of Rs. 3,500 ; that thereupon Dwarka Nath Roy was set at liberty ; that subsequently his application for insolvency was rejected ; that on the application of the plaintiffs the District Judge directed the second Subordinate Judge of Dacca to issue a notice on the defendant calling upon him to produce Dwarka Nath Roy ; that [163] the defendant failing to produce the said Dwarka Nath, the

* Appeal from Appellate Decree No. 13 of 1901 against the decree of G. Gordon, District Judge of Dacca, dated Dec. 4, 1900, reversing the decree of Upendra Nath Bose, Officiating Subordinate Judge of that district, dated July 28, 1900.

(1) (1882) I. L. R. 9 Cal. 271.

25 I. A. 151.

(2) (1898) I. L. R. 25 Cal. 833 ; L. R.

(3) (1894) I. L. R. 19 Bom. 694.