1869

PRABHURAM HAZRA v. T. M. ROBINSON.

and the first defendant jointly but against the first defendant, the vendor alone; and therefore that part of the suit seems to me, if it were intended to be a suit for specific performance, not maintainable.

I would wish to add this, that I entirely agree with the observations which have fallen from my learned brother Jackson with reference to that part of the judgment of the lower Appellate Court, which says that the suit for registration of the patta could not lie, because there is no specific arrangement that registration should take place. That point does not arise, because this suit will not lie for other reasons. But I think it desirable to notice it, because it would be more mischievous if any such notion were to prevail. In every contract of purchase there is an implied contract that the seller will do everything that is necessary to complete the title of the buyer.

Before Mr. Justice Bayley and Mr. Justice Mitter

1869
May 7

CHANDI PRASAD NANDI (JUDGMENT-DEBTOR) v. RAGHUNATH DHAR (DECREE-HOLDER) *

Computation of Time—Decree.

Held, that in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor, should be deducted.

THIS was an application to execute a decree against the judgment-debtor. In June 1860, an application was made for execution, and warrant issued against the person of the judgment debtor, who was arrested, but subsequently released, as a special appeal was then pending from the decree then in execution. On the 27th September 1860, the case was struck off. In April 1862, a fresh application was made for execution, but the record was not received till 9th April 1862. In the meantime, that is, in November 1861, the decree had been placed under attachment, and this attachment continued till the 27th August 1863. As nothing was done pending the attachment, the case was struck off on the 20th April 1862. In June 1864 an application was made by the purchaser of the decree, stating that the decree had been sold, and praying that his name might be substituted in the place of the original decree-holder In August 1864, such order was made, according to the prayer of the purchaser, and leave was given to proceed to execution. Nothing, however, was done, and the case was struck off on the 30th August 1864.

The present application was made in February 1865.

* Miscellaneous Special Appeal, No. 78 of 1869, from a decree of the Officiating Judge of Mymensing, dated the 1st December 1868, reversing a decree of the Sudder Ameen of that district, dated the 23rd November 1866.

1869

CHANDI PRASAD NANDI v. RAGHUNATH DHAR.

The Sudder Ameen held, that the decree was barred by lapse of time, as no effectual step had been taken by the decree-holder within three years from the 27th September 1860 to 30th August 1864, which was confirmed by the Judge, on appeal.

An application was made for a review of the judgment, and the Judge held, that the decree was not barred by lapse of time, as the period during which the decree remained under attachment, should be deducted from the calculation of the three years' limitation. He accordingly decreed the appeal.

The judgment-debtor appealed to the High Court, on the ground that the period, during which the decree remained under attachment, should not have been deducted from the calculation of the period of three years.

Baboo *Mati Lall Mookerjee* for appellant.

None for respondent.

The judgment of the Court was delivered by

BAYLEY, J.—We consider that the period for which the decree was under attachment, and was consequently in a state in which the decree-holder could exercise no due diligence, nor take any effectual proceedings in furtherance of his decree, has been properly deducted by the lower Appellate Court.

The appeal is accordingly dismissed.

Before Mr. *Justice Norman and Mr. Justice E. Jackson.*

FAKIRUDDIN MOHAMMED AHASAN (PLAINTIFF) *v.* MR C. J. PHILLIP'S (DEFENDANT)*

1869
May 8

Stipulation in Lease—Collections by Sezawal—Continuing Liability of Tenants.

It was stipulated in defendant's lease that, on his failing to pay any instalment of the rent, plaintiff might appoint a sezawal to collect direct from the under-tenants.

Held, that the appointment of such a sezawal did not determine defendant's lease, and that he was still liable for any deficiency in the rent after the sezawal's collections were credited.

IN this case plaintiff sued defendant as izardar under an agreement by which defendant agreed to pay an annual rent of rupees 1,246 in certain instalments, and in which it was stipulated that, on failure to pay any one of the instalments, plaintiff should appoint a sezawal to collect the rents from ryots, defendant paying the sezawal's salary. In Aswin 1273 (September 1866) plaintiff appointed a sezawal, who collected rupees 919-5. A sum, of rupees 100

*Special appeal, No 2970 of 1868, from a decree of the Judge of Rajshahye, dated the 12th June 1868, modifying a decree of the Deputy Collector of that district, dated the 7th March 1868.