

1870  
HARRAK SING  
v.  
TULSI RAM  
SAMU.

whole tenor of their answer, gave sufficient means to the Court to raise the issue as to whether their tenure was protected under the provisions of sections 3 and 4, Act X of 1859.

I concur, therefore, with Mr. Justice Mitter in holding that the Deputy Collector was wrong in not having raised and tried an issue upon that point.

I would, accordingly, reverse the judgment of the senior Judge, Mr. Justice Jackson, and remand the case to the first Court for determination of the issue above noticed.

*Before Mr. Justice L. S. Jackson and Mr. Justice Phear.*

GOLAM ASGAR (PLAINTIFF) v. LAKHIMANI DEBI

AND OTHERS (DEFENDANTS).\*

1870  
March, 9.

*Execution of Decree—Limitation—Purchase of Decree in Execution—Act XIV of 1859, s. 20.*

See also 11 B. L. R. 43. G. A. obtained a decree against M. Afterwards L. N., who had obtained a decree against G. A., attached the decree which he (G. A.) had obtained against M., and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by L. N. against G. A. was barred by limitation.

*Held*, that the execution of L. N.'s decree against G. A. being barred by lapse of time at the time of sale, the sale was invalid.

THE following case was referred, for the opinion of the High Court, by the Judge of the Small Cause Court of Raraghat:

“The plaintiff had got a decree against Ramdhan Maddak, and afterwards the defendants, in execution of a decree, which they held against plaintiff, put up for sale, and themselves purchased, the plaintiff's decree against Maddak. Meantime, a litigation was going on between the plaintiff and the defendants, in reference to the decree, which the latter held against the former, and which was finally held to be barred by limitation; but before this consummation was arrived at, defendants had sold, and themselves bought in, plaintiff's decree against Maddak. The plaintiff now sues them for the amount of that decree with interest. The defendants, admitting all the facts stated above, plead that, when their decree against the plaintiff, in execution of which the plaintiff's

\* Reference, No. 3 of 1870, from the Judge of the Small Cause Court of Raraghat, dated the 31st January 1870.

decree against Maddak was sold, and bought in by them (defendants) was declared barred by limitation, everything done in execution of it became *ipso facto* void, among the rest the sale and purchase by them (defendants) of the decree against Maddak, and that the plaintiff has reverted to his original position, as decree-holder, and can execute the decree against Maddak, no part of which has been satisfied by the latter, and which is still in full force, and that the defendants have no objection to his doing so; so that, in fact, the plaintiff has suffered no injury at all. The first question is whether the invalidation of the defendants' decree *ipso facto* voids the sale, in execution of it, of the plaintiffs decree against Maddak, and remits the plaintiff to his original position as holder of that decree. If so, he has of course no right of action in this Court, because his decree against Maddak being still unexecuted, and not barred by limitation, he will be in as good a position with regard to it as ever and will have suffered no loss by the defendants' proceedings. But, if notwithstanding the judgment on limitation, the sale remains valid, he will have been deprived of all benefit from his decree.

“The second question is, supposing that the sale of the decree against Maddak remains valid, notwithstanding that the decree, in course of which that sale took place, was subsequently set aside, is plaintiffs proper remedy a suit in this Court, or is he barred by section 11, Act XXIII of 1861?”

As bearing upon the first question, the Judge referred to *Chunder Kant Surmah Talookdar v. Bissessur Surmah Chuckerbutty* (1), *Jan Ali v. Jan Ali Chowdhry* (2), *Nursing Churn Sein v. Bidyadhuree Dossee* (3), *Jodoo Nath Gossain v. Nobokishen Chatteree* (4).

The following were the judgments of the High Court :

JACKSON, J.—In this case the first of the two questions raised by the Officiating Judge of the Small Cause Court at Ranaghat is the only one which it seems necessary to answer. That question is, whether the invalidation of the defendants'

(1) 7 W. R., 312.

(3) 2 W. R., 275.

(2) 1 B. L. R., A. C., 56.

(4) 4 W. R., 66.

1870 decree voids the sale made in execution of it of the plaintiff's  
 GOLAM ASGAR decree against Maddak.

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 DEBI.

The circumstances were that the plaintiff, Golam Asgar, had got a decree against Maddak, and afterwards the defendants, Lakhi Narayan and others, who held another decree against the plaintiff, Golam Asgar, sold, and became themselves the purchasers of the first mentioned decree against Maddak. It afterwards turned out that the decree which Lakhi Narayan and others held against Golam Asgar was barred by limitation. The question, therefore, is, whether the circumstance that the execution of the decree, under which that sale took place, was barred by lapse of time, invalidated all that took place in that execution. It seems to me quite clear that it did. In the cases referred to by the Judge of the Small Cause Court, the facts were otherwise. In those cases, the sale took place under a decree which at the time of the sale was in force and valid ; and, consequently, the Court in selling the property acted with jurisdiction, and the circumstance that the decree was afterwards reversed on appeal, or upon a review of judgment, would not vitiate what was done under the decree before reversal, or divest the Court of its jurisdiction to do that which it did. In the present case, it appears that, at the time of the sale, the execution of the decree under which the sale took place had been barred by limitation. The Court was, therefore, incompetent to execute that decree, or to do anything under it. The sale, therefore, naturally, like every thing else done in that stage of the proceedings, and after the bar of limitation had occurred, fell to the ground. Under these circumstances the plaintiff, it is clear, is not in any way injured by what took place, and has no cause of action against the defendant.

PHEAR, J.—It has before occurred to me to draw a distinction between the case of a sale effected in execution of a decree which was valid at the time of the sale, and a sale in execution of a decree which is afterwards pronounced by a competent Court to have been an invalid decree at the time of that sale. I concur in the judgment pronounced by Mr. Justice Jackson.