

# APPENDIX.

*Before Mr. Justice Kerr and Mr. Justice Glover.*

DAMUDAR ROY (DEFENDANT) v. NIMANAND CHUCKERBUTTY (PLAINTIFF)\*

1871  
April 17

*Sale—Act VIII of 1865 (B. C.)—Right of Purchaser.*

A purchaser at a sale in execution of a decree held under Act VIII of 1865 (B. C.) cannot be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to, or had notice of, the fraud.

On the 28th December 1865, 23 bigas of māl land were sold in execution of a decree against Gopal Pal, and purchased by Nimanand. The talookdars received rent from Nimanand, and granted receipts to him, styling him *marfatdar*. The talookdars brought a suit against Gopal Pal for arrears of rent of 1275 B. S. (1867-68), and obtained a decree. In execution of this decree, the tenure was sold and purchased by Damudar Roy. Hence the present suit by Nimanand to set aside the sale, and to recover possession.

The talookdars (Messrs. Robert Watson and Co.) denied the tenancy of the plaintiff and the receipt of rent from him.

The defendant Damudar contended that the sale could not be set aside, nor his possession disturbed.

The Moonsiff dismissed the suit.

On appeal, the Subordinate Judge found upon the evidence that the plaintiff was the purchaser of the land in dispute; that he held possession of it through tenants; that he paid rent to the talookdars, and obtained dakhilas, wherein he was styled *marfatdar*; and held that the talookdar could not, after having received rent and granted dakhilas to the plaintiff, sue the former tenant for arrears of rent for a period subsequent to the auction-sale. He accordingly passed a decree in favor of the plaintiff.

The defendant Damudar Roy appealed to the High Court.

Baboo Rashbehari Ghose for the appellant.

Baboo Mahendrolal Shome for the respondent.

The judgment of the Court was delivered by

KERR, J.—The special appellant in this case is one of the defendants of the Court below, who is the purchaser of a tenure, under the provisions of Act VIII of 1865 (B.C.). He contends that he is an innocent purchaser; that

\* Special Appeal, No. 2464 of 1870, from a decree of the Subordinate Judge of Midnapore, dated the 23rd August 1870, reversing a decree of the Moonsiff of that district, dated the 22nd July 1869.

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the Courts below have not found that there was any fraud on his part, and, therefore, that, under the ruling laid down in *Jan Ali v. Jan Ali Chowdhry* (1), as the decree for rent existed at the time when the sale was made, and the sale was a *bona fide* one, and he was a *bona fide* purchaser for value, and as the tenure passed under that sale, and not the rights and interest of the defaulter, that he is entitled to receive that tenure free of encumbrances. It appears that the plaintiff purchased the rights and interests of one Gopal Pal in 23 bigas 13 katas of land. It is said that these 23 bigas 13 katas comprise the whole tenure; that the plaintiff purchased in execution of a Civil Court decree against Gopal Pal on two dates namely, on the 20th December 1865 and on the 8th June 1866. The plaintiff then states that he got possession, and let out the lands to Gopal Pal; that he (the plaintiff) paid rent to the patnidars, Watson and Co.; that the rent of 1275 (1868) was paid by him (the plaintiff) and that, notwithstanding such payments, Watson and Co. sued Gopal Pal for rent, obtained an *ex parte* decree, and sold the tenure; upon which the defendant became the purchaser. The plaintiff sues to obtain possession of this tenure, and set to aside the sale to the defendant.

The first Court dismissed the plaintiff's suit, and appears to have found that the dakhilas put in by the plaintiff were spurious. The second Court found that the plaintiff was the purchaser of the rights and interest of Gopal Pal; and although he had not registered his name in the patnidar's sherista, that he had paid rent to the patnidar, and that he had obtained dakhilas, acknowledging him (the plaintiff) to be the auction-purchaser of the tenure. The Subordinate Judge further found that the proceedings of the zemindar in suing for the rent of 1275 (1868), as against the old tenant Gopal Pal, were fraudulent, inasmuch as these arrears did not exist, and had already been recovered from the plaintiff, the auction-purchaser. He therefore reversed the decision of the first Court as already stated.

The main ground of special appeal is comprised in the third ground taken, namely, that, even if the decree obtained by the patnidar was improperly obtained, inasmuch as no arrears were due, still the special appellant was not answerable for this, there being no legal evidence of fraud as against him.

We think that there can be no doubt that the decision of the Chief Justice in *Jan Ali v. Jan Ali Chowdhry* (1) does apply to this case. There was an existing decree for rent at the time of the sale, and that was regularly conducted by the Collector under that decree. Before, therefore, the defendant's purchase of the tenure under Act VIII of 1865 (B. C.), which conveyed to him the tenure free of encumbrances, can be set aside, it must be shown that the decree and sale were fraudulent; and that the purchaser (defendant) was a party to that fraud, or had notice of that fraud.

We therefore remand the case to the lower Court for a finding on this point. Costs to follow the result.

Before Mr. Justice Glover and Mr. Justice Payl.

IN THE MATTER OF THE PETITION OF UMA CHARAN BANERJEE.\*

*Regulation V of 1817—Hidden Treasure—Duty of Finder of Hidden Treasure—Right of Zemindar to Hidden Treasure—Right of Government.*

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May 17.

CERTAIN persons found some earthen pots under the earth containing coin worth about Rs. 348. The zemindar's servant took the money from them on account of the zemindar. The finders instituted a charge of theft against the servant, which was dismissed, and the money and a notice of what had taken place, were sent by the Magistrate to the Judge of the district, that the property might be disposed of under Regulation V of 1817: The zemindar claimed the property on the ground of his being owner of the soil. The finders claimed the property on the ground of having found it. The Government claimed the property, as the provisions of the law had not been complied with.

The Judge held that the finders were not entitled to the property, as they had not complied with the provisions of section 8, Regulation V of 1817; that the zemindar was not entitled to it, as he was not the finder, and as he did not give any notice to the Judge as required by the Regulation. He held that the property was an escheat, and accordingly passed an order to make it over to the Collector on behalf of the Government.

The zemindar appealed to the High Court.

Baboo Taraknath Dutt for the Appellant.

Baboo Abinash Chunder Banerjee for Government.

The judgment of the Court was delivered by

GLOVER, J.—The appellant in this case objects to the order passed by the Judge of Hooghly in respect of the ownership of certain treasure found in a field within the appellant's zemindari. It appears that certain persons, in the course of digging a field within the appellant's estate, came upon an earthen pot containing some 348 rupees. There was a quarrel amongst themselves regarding the appropriation of the money which the zemindar heard of, and so came in and took it on his own account. The zemindar claims this property in the first place, alleging that he was the person who found it, inasmuch as it was found by his servants while carrying out his orders in digging a field.

If this be so, and if he be entitled to call himself the finder of this hidden treasure, it is quite clear that, under Section 8 of Regulation V of 1817, he

\*Miscellaneous Regular Appeal, No. 98 of 1871, from a decree of the Judge of Hooghly, dated the 29th December 1870.

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has lost his right, inasmuch as he did not notify the fact of the money being found to the Zilla Judge within one month as required by the Regulation. He then states that, supposing that he is not entitled to claim as finder, he is entitled to get the money under the general custom of the country, which gives property, of this description to the owner of the estate in which it is found. Now, in the first place, whatever custom there might have been at one time with regard to such matters, was done away with by the enactment of Regulation V of 1817, the preamble of which states expressly the reason why that law was enacted,—namely, because of the doubts which had arisen as to the disposal of such property on account of the conflicting provisions of the Hindu and Mahomedan law; and even were we to suppose for the sake of argument that there was such a custom still existing, it is quite clear that the appellant could not be called, in the sense which he seeks, the owner of the soil, inasmuch as the ownership of the soil for such purposes would be the ruling power of the country,—that is, the Government.

The appeal is dismissed with costs.

*Before Mr. Justice E. Jackson and Mr. Justice Mookerjee.\**

1871  
Feb'y 6.

RAM DAS SAHA (PLAINTIFF) v. MAN MAHINI DAS (DEFENDANT).<sup>†</sup>

*Special Appeal—Improper Mode of Dealing with Evidence—Ground of Special Appeal.*

Baboo Krishna Sakha Mookerjee and Hem Chandra Benerjee for the appellant.

Baboo Dwya Mohan Das and Nalit Chandra Sen for the respondent.

The judgment of the Court was delivered by

JACKSON, J.—We think that the decision of the lower Appellate Court must be set aside. The question at issue in the case was as to the right of the plaintiff to recover possession of half of a certain godown. The defendants pleaded limitation, and pleaded also that the half of the godown belonged to them. There appear to have been two suits connected with this half share of the godown: one in the Small Cause Court in which the defendants sued for rent and in which the present plaintiff intervened, but his claim was disallowed, and the defendants obtained a decree for the whole rent; the other suit was instituted by the present plaintiff, and was numbered 173 of 1868, but it was subsequently withdrawn. The first Court, in taking up the present case, appears to have sent for the record of the case No. 173 of 1868, as well of the Small Cause Court case. It would appear that a number of the defendant

\* Special Appeal, No. 1880 of 1870, from a decree of the Additional Subordi-

nate Judge of Dacca, dated the 25th June 1870, reversing a decree of the Moonsiff of that district, dated the 29th November 1869,