

Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court should be affirmed, and this appeal dismissed with costs.

1872

ANUND LOLL
DASS
v.
JULLODHUR
SHAW.

Appeal dismissed.

Agent for appellant : Mr. Barrow..

Agent for respondents : Mr. Wilson.,

ALEXANDER JOHN FORBES (PLAINTIFF) v. BABOO LUTCHMEPUT
SINGH AND OTHERS (DEFENDANTS).

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Sale of Sub-tenure for Arrear of Rent—Encumbrances—Regs. VII of 1799 (1), VIII of 1819, I of 1820, and VIII of 1831 (2)—Act VIII of 1835 (3)—Act X of 1859, s. 105 (4).

P. C.*
1872
Jan'y. 26.

Where a sub-tenure had been granted, but no power was reserved to the grantor in the sunnud to sell the tenure free from encumbrances in case of default in payment of rent, held that, in a sale for arrears of rent under Reg. VIII of 1831, the purchaser did not take free from encumbrances created by the grantee.

The decision in *Shahabodeen v. Futeh Ali* (5) affirmed.

THIS was an appeal from a judgment passed on review by the High Court of Bengal on the 26th April 1867. Some time previous to 1793, certain talooks were granted by way of *istemrar* to one Hossein Reza and his descendants at a fixed jumma of Rs. 2,291. On the 13th March 1850, Shah Ali Reza, being then the holder of the talooks, made a conditional sale of them to one Forbes to secure re-payment of a loan. Forbes took steps to foreclose on the non-payment of the debt, and having absolutely foreclosed obtained a decree for possession on 18th December 1854.

* Present :—SIR JAMES W. COLVILLE, SIR JOSEPH NAPIER, SIR MONTAGUE SMITH,
AND SIR LAWRENCE PEEL.

(1) Reg. VII of 1799, ss. 1 to 20, repealed by Act X of 1859, (4) See Bengal Act VIII of 1869, ss. 59 to 61

(2) Reg. VIII of 1831, repealed by Act X of 1859. (5) Case No. 992 of 1866; 13th March 1867.

(2) Act VIII of 1835, repealed by Bengal Act VIII of 1865.

1872

FORBES
v.
BABOO
LUTCHMEPUT
SINGH.

On the 6th January 1855, the zemindar of the talooks, Baboo Pertab Singh, brought a suit in the Collector's Court, under Regulation VIII of 1831, to recover rent due from the grantee of the talooks, and he also appointed persons to collect the rent direct from the cultivators so as to secure his annual jumma. In March 1855, Forbes petitioned the Judge, complaining that his decree for possession as against his mortgagor could not be executed in consequence of the zemindar's men collecting the rents; he also prayed, in a petition to the Collector, that he should be allowed to deposit with the Collector money which he had tendered to the zemindar in respect of the rent due from the date of the decree, but which had been refused; but nothing appeared to have been done under those petitions. On the 27th March 1855, Baboo Pertab Singh applied for execution of his rent-decree by the sale of the talooks, and on the 26th April, they were sold by the Collector, and bought for Rs. 1,000 by Sheikh Jowhur Ali, one of the present respondents.

On the 21st May 1855, Forbes, relying on his decree for possession, applied to the Collector for mutation of his name in lieu of that of his mortgagor, but the Collector refused on the ground that the taloōks had been sold for arrears of rent. The usual Act IV of 1840 cases ensued, and resulted in Sheikh Jowhur Ali being kept in possession.

In March 1856, Forbes commenced the suit, out of which this appeal arose, against the zemindar and the purchaser at the Collector's sale. In his plaint he contended that, previous to the sale by the zemindar, the foreclosure proceedings being complete, Shah Ali Reza had no further interest in the talook, and that he, Forbes, should be recognised as talookdar. The defendants contended that, inasmuch as the grantee through whom the plaintiff claimed had made default in payment of rent, and, while he was in possession of the premises, these premises had been sold by the Collector for such arrears, all sub-tenures, or mortgages, created by him fell to the ground, and that therefore the plaintiff had no right. Before the case was decided, Forbes' decree against the mortgagor for possession was reversed on appeal by the Sudder Court, and accounts were ordered to be taken. The effect of this reversal being to destroy Forbes' possessory title, the Prin-

cipal Sudder Ameen dismissed his suit against the zemindar and Sheikh Jowhur Ali.

1872

FORBES
v.
BABOO
LUTCHMEPUT
SINGH.

Against this decree he appealed to the High Court ; but in the mean time the Sudder Court having on review dismissed his possessory suit by decree of 21st April 1862, his right to conduct the present suit was held by the High Court on the 12th March 1863 to have determined.

In February 1866, Her Majesty in Council reversed the decree of the Sudder Court of 21st April 1862, whereupon Forbes applied to the High Court for a review of the decision of the 12th March 1863 ; and the review having been admitted and argued, the High Court, on the 26th April 1867, rejected the review and dismissed the plaintiff's suit (1), the effect of the decision being to pass the whole tenure to Sheikh Jowhur Ali under his purchase at the Collector's sale.

Forbes appealed against that decision to Her Majesty in Council.

Sir *R. Palmer*, Q.C., and Mr. *Leith* for the appellant.—There appears to have been some misapprehension as to the terms of the sunnuds under which Shah Ali Reza held ; the High Court state in their judgment that, “ by the terms of the sunnud or lease, it is not the rights and interests, but the tenure itself which passes, if the arrears due upon it, including Government revenue, undertaken to be paid as part of the rent, should not be paid.” if this is erroneous, the whole principal of the judgment is erroneous, and the decision of *Shahaboodeen v. Futteh Ali* (2) must govern this case.

The sunnuds are not in the record, but we are informed that they are precisely the same as those in the record of the appeal suit between the present appellant and Shah Ali Reza's widow, *Forbes v. Ameeroonissa Begum* (3) ; and if this be so, it will be found that no such terms exist in the sunnud.

(1) Act IV of 1840, repealed by Act XVII of 1862 ; see Ch. XXII of the old Criminal Procedure Code (Act XXV of 1861) and Ch. XL of the new Code (Act X of 1872.)

(2) Case No. 992 of 1866; 13th March 1867.

(3) 10 Moo. I. A., 340.

1872
 FORBES
 v.
 BABOO
 LUTCHMEPUT
 SINGH.

The learned Counsel then proceeded to consider the Regulations as supporting the decision of the Full Bench in the case of *Shahaboodeen v. Futteh Ali* (1), and they also referred to *Tirthanund Thakoor v. Paresmon Jha* (2) and *Mohesh Chunder Banerjee v. Chunder Monee Debee* (3).

(1) Case No. 992 of 1866; 13th March 1867.

(2) *Before Mr. Justice Loch and Justice Sir C. P. Hobhouse, Bart.*

TIRTHANUND THAKOOR AND OTHERS (PLAINTIFFS) v. PARES-MON JHA AND ANOTHER (RESPONDENTS).*

Baboo *Tarrucknath Sen* for the appellants.

Baboo *Khettermohon Mookerjee* for the respondents.

HOBHOUSE, J.—This is a suit rather of a peculiar nature, and it is necessary to state carefully the facts on which we have to come to a decision on the point of law before us.

The plaintiff in this suit held a decree against one of the defendants, Rung Lall, in the Revenue Court for arrears of rent for the year 1273 and 1274. This decree was dated the 10th September 1867. The co-defendant of Rung Lall, namely, Paresmon Jha, held a money-decree in the Moonsiff's Court against the said Rung Lall, dated the 28th May 1867. In execution of this money-decree, the defendant Paresmon Jha put up for sale the rights and interests of Rung Lall in the tenure, which is the subject of dispute before us; and on the 29th November 1867, the said Paresmon Jha became the purchaser of the said rights and interests in the said tenure. Thereafter, on what date we are not shown, the plaintiff prayed in the Revenue Court for execution of his decree for arrears of rent of the 10th September 1867 by the sale of the said tenure of Rung Lall.

The arrears of rent for which the decree was given were admittedly arrears due from the defendant, Rung Lall, as the tenant of the tenure which was sold to the defendant Paresmon.

When the plaintiff applied for execution of his decree in the manner I have said, the Deputy Collector, on the 25th April 1868, refused to allow such execution to proceed on the ground that whatever had been Rung Lall's rights and interests in the tenure had been sold to the defendant Paresmon at the previous sale by the Civil Court.

Under these circumstances, the plaintiff sues for the reversal of the sale made by the Civil Court on the 29th November 1867, and for the cancellation of the order of the Deputy Collector of the 25th April 1868, and to obtain sale of the tenure in question.

The lower Appellate Court has dismissed the plaintiff's suit on the ground that the sale to the defendant of the 29th November 1867 was a good sale, and that there cannot, therefore, be any re-sale of the rights and interests of the judgment-debtor Rung Lall in the tenure in question.

In special appeal it is contended that this judgment is erroneous in law, and the argument of the pleader for the special appellant is this:—He says that inasmuch as the defendant Rung Lall was the tenant of the under-tenure in question, and that inasmuch as the arrears of rent for which the decree was given to the plaintiff were arrears of rent due by the tenant of this particular tenure, so

(3) *Post*, p. 150.

* Special Appeal, No. 2997 of 1869, from a decree of the Subordinate Judge of Purneah, dated the 17th September 1869, affirming a decree of the Moonsiff of that district, dated the 27th May 1869.