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IN RE SHASHI BHUSHAN BHADURY.

the reasons for thinking that the Small Cause Court of Calcutta was subject to have a writ of *mandamus* issued to it by the High Court; but we do not think that the Small Cause Court of Calcutta was, therefore, intended by the Legislature to be included as a Court of Small Causes subordinate to the High Court. In fact, that has been the construction hitherto put upon the Act, inasmuch as this Court has never considered that section 4 authorized the High Court to make rules for the admission of pleaders in the Calcutta Small Cause Court. We are of opinion that the Small Cause Courts intended to be included in Act XX. of 1865 were the Small Courts established under Act XI. of 1865, which, according to section 4 of that Act, are like the Mofussil Courts, made subject to the general control and orders of the High Court.

For these reasons, it appears to us, that the Small Cause Court should be informed that we do not think that pleaders of the Mofussil Courts are, as such, entitled to practise in the Small Cause Court at Calcutta.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

R. E. BELL v. GURUDAS ROY.*

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June 29.

Form of Decree on Appeal.

In reversing a decree on appeal, the Court should state the relief which they consider the appellant entitled to.

A. purchased a Government revenue-paying estate from B., but on going to take possession he found C. who claimed under a putnee-grant also from B., in possession. A case was therefore instituted by B., under Act IV of 1840, but it was ordered that C. should be retained in possession. A then brought a suit against B. and C., to recover his purchase money. No relief was asked against C., nor had C. any thing to do with the sale from B. to A. The suit was dismissed. On appeal it was ordered merely, "that the decree be reversed, and the appeal decreed with costs." Nothing was asked against C. in the grounds of appeal. In execution of this decree, C.'s property was seized and sold. C. petitioned the Principal Sudder Ameen, who held that he was not liable, but on appeal the Judge held that he was liable for the purchase-money, and his property had been rightly sold in execution for it. *Held*, on special appeal, that C. was not liable to refund the purchase-money.

* Miscellaneous Appeal, No. 131 of 1868, from a decree of the Judge of Dacca, reversing a decree of the Principal Sudder Ameen of that district.

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THE facts of this case were as follows: Gurudas Roy purchased two properties from Brahmamayi Devi and Ramjaya Samadar. On proceeding to take possession, he was opposed by Mr. Bell, on the ground that he (Mr. Bell), held a putnee of the two talooks, which had been granted to him prior to the sale to Gurudas. A case under Act IV. of 1840 was instituted, and it was ordered that Mr. Bell should be retained in possession. Upon this, Gurudas Roy brought a civil action to recover his purchase-money, as well as the revenue which he was obliged to pay on account of the two talooks, against the two vendors, and made Mr. Bell a co-defendant. There was no allegation in the plaint, nor did it appear in evidence that Mr. Bell had any thing to do with the purchase, and no relief whatever was asked against him. The Principal Sudder Ameen dismissed the plaintiff's suit. On appeal, the Judge reversed the decision of the first Court. The decretal order of the second Court, which is the subject of the present contention, was "that the decree be reversed, and the appeal decreed with costs."

In execution of this decree the property of Mr. Bell was attached and sold. Mr. Bell applied under section 256 of Act VIII. of 1859 to have the attachment set aside.

The Principal Sudder Ameen set aside the sale, holding that Mr. Bell was not liable for the purchase-money or the Government revenue. But he at the same time held that, as Mr. Bell had appeared in the appellate Court in that suit through a vakeel, he should pay the costs of that suit.

The Judge found that Mr. Bell was liable for the original amount of the decree, jointly with any other defendant; and that the Principal Sudder Ameen had no authority, in execution, to release Mr. Bell from any part of his liability.

Baboo *Banshidhar Sen* for appellant.

Baboo *Girija Sankar Mozoomdar* for respondent.

The judgment of the Court was delivered by

PEACOCK, C. J.—Looking at this case from beginning to end, I should scarcely have thought it possible that there could be such a case in existence. It appears that Gurudas Roy, the respond-

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ent in this appeal, purchased two Government revenue-paying estates from Brahmamayi Devi and Ramjaya Samadar. Upon seeking to obtain possession, the property was found to be in the possession of Mr. Bell, the appellant in this case, who claimed under a putnee-grant from the same vendors, upon which an Act IV. of 1840 case was instituted, and it was ordered that Mr. Bell should be retained in possession. Thereupon Gurudas Roy instituted a civil suit to recover back his purchase-money, and also certain revenue which he had paid to Government in respect of the estates. Mr. Bell, though he appears to have had nothing at all to do with the sale to Gurudas, or the receipt of the purchase-money from him, was made a co-defendant. No reason was given in the plaint for making Mr. Bell a party. The plaintiff did not even suggest that he had a right of action against him, but in his plaint simply prayed a refund from the Devi and the Samadar, defendants, of his purchase-money, and of the revenue which he had paid. No relief whatever was asked against Mr. Bell. The suit was originally tried before the Principal Sudder Ameen, and was dismissed.

On appeal to the Additional Judge of Zilla Dacca, he ordered "the decree to be reversed, and the appeal decreed with costs." Nothing further was said in the decree. There was no award that any body should recover anything from any body else. What then was the effect of reversing the decree of dismissal of the suit, without decreeing any thing against any one? Especially, what was the effect of reversing the decree of dismissal as regards Mr. Bell, from whom no relief was sought? Did it amount to an affirmative decree that the plaintiff should recover from him the purchase-money and the Government revenue which he had paid?

In execution of the decree of the Additional Zillah Judge, Mr. Bell's property was seized and sold, upon which he petitioned the Principal Sudder Ameen, and contended that he was not liable under the decree, and that his property ought not to have been seized and sold under it The Principal Sudder Ameen held, as it appears to me very properly, that Mr. Bell was not liable to refund the purchase-money or the Government revenue,

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but he added that Mr. Bell was to pay the costs of the suit, "inasmuch as he appeared by vakeel in an appellate Court where the plaintiff, the decree-holder, was the successful suitor." I am at a loss to understand why a gentleman, who is held not liable for the debt, should be liable for the costs of the suit because he appeared by a vakeel. Mr. Bell appealed to the Judge upon the ground that he was not liable to the costs, but the Judge held that he was liable for the costs, and that his property was liable to be sold for them. We have not now anything to do with the question of costs, inasmuch as that decision of the Judge is the subject of a separate appeal, and is not now before us. Gurudas also appealed from the same decision of the Principal Sudder Ameen, upon the ground that the Principal Sudder Ameen had held, that Mr. Bell was not liable for the purchase-money, and Mr. Abercrombie, the Judge of Dacca, held that Mr. Bell was liable for the purchase-money, and that his property was liable to be sold in execution for it. He says, "Mr. Bell is not liable for the costs only according to the terms of the decree. He is jointly liable with any other defendant for the whole decree, and the Principal Sudder Ameen has no authority, in execution, to release Mr. Bell from any part of his liability." He reversed the decision of the Principal Sudder Ameen so far as it released Mr. Bell from liability for the purchase-money and the Government revenue paid by the plaintiff, and held that his property was liable to be sold in execution for it.

It appears to me that Mr. Bell was not liable under the decree. The decree was one merely reversing the dismissal of the suit, without awarding any sum of money or anything against any body. It appears to me that the reversal of the decree of dismissal did not amount to a decree that Mr. Bell was liable for the amount which the plaintiff claimed in the suit. But the decree of the Judge not only reversed the decision of the Principal Sudder Ameen by which the suit was dismissed, but it went on and declared that the plaintiff's appeal was decreed. It is certainly very indefinite as to what liability Mr. Bell was supposed to have incurred under those words, "the appeal is decreed." I have already pointed out that no relief had been

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asked for against Mr. Bell, that he was not alleged to have had anything to do with the sale of the property to the plaintiff or with the receipt of any portion of the purchase-money; although he was made a party to the suit, no relief whatever was asked against him. Now, in order to ascertain what was the effect of decreeing an appeal against the dismissal of the suit, it is necessary to look at the grounds of appeal. The grounds of appeal were very similar to the plaint so far as Mr. Bell was concerned, for they made no complaint against him. They stated that the vendors had executed a conveyance to the plaintiff and received from him the purchase-money; that they, the vendors, had granted a putnee to Mr. Bell, and that in a suit under Act IV. of 1840 the plaintiff's conveyance had been rejected and Mr. Bell's putnee upheld, and that Mr. Bell had been ordered to be retained in possession. Under such circumstances, the appellants alleged that the dismissal of the suit for a refund of the purchase-money and of the Government revenue was erroneous. That ground of appeal merely stated that the vendors had, after the sale to the plaintiff, granted a putnee, to Mr. Bell, of the property sold by them to the plaintiff. If that were the case, the plaintiff was entitled to recover the land from Mr. Bell, because the subsequent grant of the putnee would be void as against Gurudas, a prior purchaser. The decreeing of that ground of appeal surely did not make Mr. Bell liable to refund the purchase-money, and to have his property seized and sold in execution for it. The second ground of appeal was, that as the vendors had received the purchase-money from the plaintiff, and afterwards fraudulently granted a putnee to Mr. Bell, they could not be relieved from a refund of the purchase-money. I am at a loss to conceive how an order, decreeing that ground of appeal, could be held to be tantamount to a decree against Mr. Bell, who was not one of the vendors, that he should refund the purchase-money. The third ground of appeal was that the putnee having been upheld in a suit under Act IV. of 1840, the validity of the putnee granted to Mr. Bell was no longer open to investigation, in other words, that the decision of the Magistrate in a case under Act IV. of 1840 was conclusive in a suit brought in a Court of Civil Judicature upon title. This ground

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of appeal was, like the rest, also decreed, probably through inadvertence: but a decree that the validity of Mr. Bell's putnee could not be investigated by the Civil Courts in consequence of the decision of the Magistrate in an Act IV case, was by no means tantamount to a decree that Mr. Bell was liable to refund the purchase-money which had been paid by Gurudas to his vendors.

Judges, when they reverse a decree, should be careful to specify the relief which they consider the appellant entitled to. It is, by using such words as "decree reversed" and "appeal decreed," that when the decree of the Appellate Court comes to be executed, no one can say what it is that the Court intended to decree, or what relief they intended to give, or what liability the respondent has incurred under it. This Court has been occupied a considerable time in endeavouring to ascertain what the Judge meant to award against Mr. Bell, when he reversed the decree by which the suit was dismissed, and decreed the appeal. In order to ascertain what was meant by "decreeing the appeal," it has been necessary for this Court to go back to the appeal which was decreed, and to look to the grounds of that appeal. Upon doing so, they find that these words imposed no responsibility upon Mr. Bell. All the anxiety, delay, and expense of a petition to the Principal Sudder Ameen against the sale of Mr. Bell's property in execution of that decree, and of the appeal from the decision of the Principal Sudder Ameen in the execution-procedings, might and would have been avoided, if the Judge, instead of using the general term "decree appealed," had specified in clear and intelligible language what he himself intended when he pronouced his judgment. If he had attempted to define what he meant, the question would necessarily have occurred to him: "Am I to order Mr. Bell, who is in possession of an estate under a putnee granted to him, to refund the purchase-money which his grantors have received upon the sale of the estate to another person?" The injustice of such a decision must necessarily have presented itself to his mind; and if he had then referred to the plaint and to the grounds of appeal, he would have found that even the plaintiff himself had not asked or any relief against Mr. Bell.

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The decision of the Judge is reversed, and it is ordered and declared that Mr. Bell is not liable under the decree for the refund of the purchase-money or of the Government revenue, and consequently that his property was not liable to be attached or sold under it. The appellant will be entitled to the costs of this appeal and the costs of the appeal to the lower appellate Court in the matter of the execution.

1868
June 8.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

JAN ALI *v.* JAN ALI CHOWDRY.*

Execution Sale—ss. 58 *and* 105 *of Act X. of* 859*—Bonâ fide Purchaser.*

See also Page 71 & 84. 5 B. L. R. 69. 11 B. L. R. 8. 8 B. L. R. 8.

A. purchased a share of B.'s talook at an auction-sale, in execution of an *ex-parte* decree obtained against B., under section 105 of Act X. of 1859. B. obtained leave under section 58 of Act X of 1859 to revive the suit, and succeeded in getting it dismissed. He now sued to set aside the sale to A. *Held*, the sale to A. was binding against B., notwithstanding that the decree in execution of which it had taken place had been set aside in review, provided the sale was *bonâ fide*.

THIS was a suit for confirmation of title in respect of 12 kanis, 2 krants share of a certain talook, by reversal of an auction-sale, held in execution of a decree under section 105 of Act X. of 1859 and Act VIII. of 1865 (B. C. on the ground that it was fraudulent and collusive.

The circumstances of the case were as follows:

Bhairab Chandra, acting as tehsildar on behalf of Eusuf Khan, had obtained an *ex-parte* decree for arrears of rent, for Rs. 2-13, against the present plaintiff, Jan Ali Chowdry, in execution of which, the disputed talook was put up to sale, and purchased by the defendant, Jan Ali. Jan Ali Chowdry, against whom the decree was passed, then applied to the Deputy Collector, for a revival of the suit under section 58 of Act X. of 1859, as well as for reversal of the decree. The application was granted, and the suit, on being re-heard, was dismissed on the 5th April, as against Jan Ali Chowdry.

* Special Appeal, No. 3302 of 1867, from a decree of the Additional Judge of Chittagong, affirming a decree of the Moonsiff of that district.