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INDRA CHANDRA DOSAR. v. TARACHAND DOSAR.

have ruled differently in *Gamble* v. *Bholagir* (1) and have held that when property has been attached before judgment, and a decree obtained before the Official Assignee was appointed, the attaching creditors were entitled to be satisfied before the Official Assignee; but, though all deference is due to the opinion of the High Court of Bombay, we think the ruling of this High Court should be followed till it be shown to be erroneous.

As the attachment does not divest the debtor of the ownership on the property, we think that attachment after decree does not put a creditor in a better position than attachment previous to judgment; and we, therefore, consider the order of the Judge is correct, and dismiss the appeal with costs.

Before Mr. Justice Loch and Mr. Justice Mitter.

ABDUL AZIM, PLAINTIFF, *v.* KHONDKAR HAMED ALI, DEFENDANT.* 1868 *Sept.* 14.

Pre-emption on ground of Vicinage—Mohammedan Law.

The right of pre-emption, on ground of vicinage, is limited to parcels of land and houses, and does not extend to the purchase of an entire estate, even though it be entirely surrounded by the lands of the would-be pre-emptor.

PLAINTIFF sued to enforce a right of pre-emption and to obtain possession of a certain small talook sold to defendant by its former owner, which lay almost surrounded by plaintiff's estate. The first Court found that plaintiff had performed all the formalities of pre-emption, and gave him a decree.

On appeal, the Judge held, that, as plaintiff sued on a right of vicinage alone, he could not claim pre-emption over so large a piece of land as the talook in dispute, which might contain from 80 to 200 bigas. *Ejnash Koer* v. *Sheikh Amzudally* (2).

Plaintiff appealed specially, urging that the doctrine laid down in the case cited, only applied to large estates and principalities, and that it was opposed at any rate to Mohammedan Law.

* Special Appeal, No. 1320 of 1868, from a decree of the Judge of Sylhet, reversing a decree of the Officiating Principal Sudder Ameen of that District.

(1) 2 Bombay H. C. R., 150. (2) 2 W. R., 261

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ABDUL AZIM v. KHONDKAR HAMED ALI.

Baboo *Debendra Narayan Bose* for appellant.

Baboo *Girish Chandra Ghose* for respondent.

The judgment of the Court was delivered by

LOCH, J.—The Judge holds in this case, that the right of pre-emption cannot be exercised by the party claiming it, because the quantity of land (about 90 bigas, more or less) is too extensive, and he quotes a judgment of the High Court, *Ejnash Kooer* v. *Sheikh Amzudally* (1) which ruled "that a claim to "right of pre-emption, on the ground of vicinage alone, would "not lie in the case of large estates, but only when houses or "small holdings of land make parties such near neighbours as "to give a claim on the ground of convenience and mutual "servience." Baillie, in his work on Mohammedan Law, page 471, defines the right of pre-emption as follows:—"The original "meaning of *shoofa* is conjunction. In law, it is a right to take "possession of a purchased parcel of land for a similar (in kind "and quantity) of the price that has been set on it to the pur-"chaser. The cause of it is the junction of the property of "the *shufee* or person claiming the right with the subject of the "purchase." And in a note, he states "that in the Moon-"tuha ul Urub, it, the word "parcel" above, is rendered by the "Persian words "parah zumeen," a piece or fragment of land."

It is probable that originally the right of pre-emption extended only to houses, gardens, and small plots of land, and this view is supported by the illustrations of what may be the subjects of pre-emption as given by Baillie; but in looking at the Hedaya, we find it stated at page 591 of volume 3, that *shoofa* takes place with regard to all lands or houses. The meaning of this is clear on reference to the context. It had been stated in a previous part of the paragraph that, according to the doctrine of *shoofa*, nothing is subject to *shoofa* but what is capable of being divided, but the prophet held differently, and adds the writer: "Besides, according to our tenets, the grand principle of "*shoofa* is the conjunction of property, and its object to prevent "the vexation arising from a disagreeable neighbour, and this

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"then is of equal force, whether the thing is divisible or other-"wise." The writer of the Hedaya then assigns the reason why the right is not applicable to movables, because of the saying of the prophet, "*shoofa* affects only houses and gardens" and "also because the intention of *shoofa* being to prevent the "vexation arising from a bad neighbour, it is needless to extend "it to property of a movable nature." Looking at the chapter on *shoofa* in the Hedaya, the right appears to be limited to parcels of land, houses, &c., does not contemplate the right to purchase a separate estate, because a part of it is counterminous with that of the *shufee*. It is true that a person may have a bad neighbour, as a zemindar, and so suffer as much vexation from him as from a bad neighbour next-door, or holding the next field, but still it appears to me that the law was intended to prevent vexation to holders of small plots of land who might be annoyed by the introduction of a stranger among them. I think I would apply the ruling laid down in the judgment of the Court quoted above, to the present case, and allow the judgment of the lower Court to stand, for the property to which the right of pre-emption is claimed is a separate estate paying revenue to Government. I would dismiss the appeal with costs.

MITTER, J.—I concur. The property in dispute is an estate paying revenue to Government, and I am not prepared to say that this case is not governed by the decision relied upon by the respondent.

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

RAMBAKSH CHETLANGI, PLAINTIFF, *v.* MAHARAJA BANWARI GOBIND BAHADUR, DEFENDANT.*

1868
Nov. 9.

Purchase of Decree held by Judgment-debtor in Execution—Act VIII. of 1859, s. 288.

A. obtained a decree in the Nuddea Court against B, who had obtained a decree against C. in the Beerbhoom Court. The latter was attached by the Nuddea Court, and sold to A. in execution of his decree. A. then petitioned the Beerbhoom Court for execution against C. *Held*, that the Nuddea Court had jurisdiction to attach and sell B.'s decree against C., and A. had a right to apply to the Beerbhoom Court for execution thereof.

* Miscellaneous Regular Appeals, Nos. 314, 315, 316, and 317 of 1868, from an order of the Subordinate Judge of Beerbhoom.