

respondent; but that the latter's only remedy in that case will be an action for damages.

Costs will follow the result.

The 29th May 1865.

Present:

The Hon'ble H. V. Bayley and J. B. Phear,
Judges.

Sale in execution of decree—What passes to purchaser.

Case No. 3126 of 1864.

Special Appeal from a decision passed by the Deputy Commissioner of Kamroop, dated the 29th August 1864, reversing a decision passed by the Principal Sudder Ameen of that District, dated the 18th July 1864.

Captain J. C. Barton (Defendant),
Appellant,

versus

Brijonath Surmah and others (Plaintiffs),
Respondents.

Baboo Juggadunund Mookerjee for Appellant.

Baboo Poorno Chunder Mookerjee for Respondents.

A sale in execution of a decree is simply what the sale notification expresses it to be, namely, a sale of the rights and interests of the judgment-debtor.

PLAINTIFF sued to recover possession of lands of which he alleges that he has been dispossessed by Captain Barton, a purchaser at a sale in execution. The admitted facts in the case are these:

One Mohessur was the recorded proprietor in the Collector's Register of 16 annas of a certain property. The rights and interests of Mohessur were sold in execution of a decree against him. At this period, and before the sale, plaintiffs, alleging that they were co-sharers to the extent of one-third in the property advertised for sale, entered a claim for that one-third, and alleged that Mohessur's name was allowed to be entered as proprietor of 16 annas, because he was manager for three co-parceners, of which, however, he was only one, with a one-third share; and that he had possession of no more. No other party, however, claimed the other one-third. The sale having proceeded, one Buloram became the purchaser. A decree having afterwards been given against Buloram, his rights and interests in the same property

were advertised for sale, and sold. Captain Barton, one of the defendants in this case, and the special appellant before us, became the purchaser. On this occasion, neither before nor after the sale till Captain Barton dispossessed them, did the special respondents in any way object to the sale? They urge that, as they were in possession, and as only the rights and interests of Buloram were sold, and those were only the rights and interests of Mohessur as originally sold, viz, after notice of the claim and possession of special respondents of their one-third share, it was not necessary for them to make any objection to the sale.

On the other hand, special appellant urges that he is a *bond fide* purchaser for valuable consideration of the whole 16 annas, as that was the recorded right and interest of Mohessur, and consequently of Buloram according to the Collector's Register; and as no declaration of right to the one-third claimed by special respondents followed their objection when Buloram bought; and as when special appellant bought, special respondent had given no notice whatever of any claim, which, it is urged, they ought to have done, if they wished to question Captain Barton being the rightful purchaser of 16 annas of Buloram and Mohessur.

In the first place, we may notice that it is admitted that Captain Barton only bought the rights and interests of Buloram, and that Buloram was *not* recorded as proprietor of 16 annas.

In the next place, the question is not to our mind that of the right of what is called a purchaser for valuable consideration without notice, but the simple one of whether Captain Barton obtained by purchase what the plaintiff now sues for. We think he did not. He purchased the rights and interests of Buloram, *whatever they might be*, so much, and neither more nor less. Now, Buloram was *not* the recorded proprietor of 16 annas; but, even if he had been, the fact for the purposes of a sale in execution is only a clue to title, not a title. The sale in execution is not of the 16 annas rights and interests of a party recorded in the Collector's Register to have 16 annas; still less is it a guarantee of 16 annas or any other amount of property. A sale in execution is simply what the sale notification in express terms says, it is "a sale of the rights and interests of a party, whatever they may be," in certain property.

This is most clearly laid down by the late Sudder Dewanny Adawlut, in page 486

of the Reports for 1857, Munoruth Roy and others, appellants, and we fully concur in the conclusions of that decision expressed in these terms: "In fact, in an execution sale, the stipulation that something does exist is absolutely withheld. Plaintiff purchased the rights and interests of Agund Roy, whatever they might be, within a 2-anna share of Mouzah Monearpore and two other villages. Afterwards it turned out that Agund Roy held no rights and interests in those villages; but plaintiff took his chance of this. The sale did not assure him of the existence of any property; he was, on the contrary, constrained to satisfy himself in the matter, and he has no valid ground to repudiate the sale."

We, therefore, think that the special appeal in this case is untenable, and dismiss it with costs.

The 29th May 1865.

Present:

The Hon'ble G. Loch and W. S. Seton-Karr,
Judges.

Hindoo Law—Adoption.

Case No. 393 of 1864.

Regular Appeal from a decision passed by the Judge of Mymensingh, dated the 12th April 1864.

Gobind Soonduree Debia (Plaintiff),
Appellant,

versus

Juggodumba Debia and Bama Soonduree Debia and others (Defendants), Respondents.

Mr. G. C. Paul and Baboos Chunder Madhub Ghose and Sreenath Doss for Appellant.

Mr. R. V. Doyne and Baboos Unnoda Pershad Banerjee and Nil Madhub Sein for Respondents.

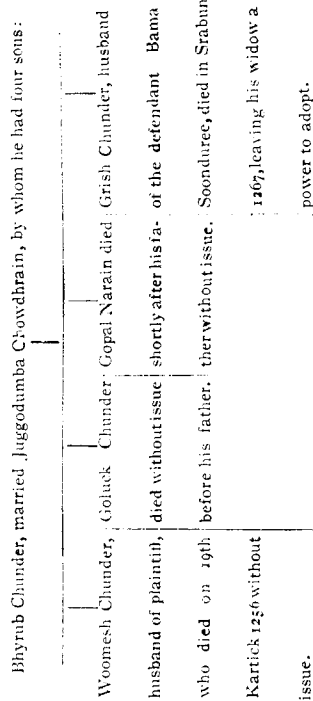
Suit laid at Rupees 49,981-11 as 4 ps.

A claim to adopt disallowed in the case of a Hindoo woman, who, so long as any male member of her husband's family was alive, took no steps to carry out her husband's permission to adopt, but who, so soon as the last male member died, and the property devolved on the last male member's widow, tried to obtain possession by the alleged dormant permission to adopt.

This suit was brought to recover possession of certain landed property mentioned in the plaint left by Bhyrub Chunder Chowdhry, the maternal grandfather of Bykunt Chun-

der, the son of the plaintiff, adopted, as is alleged by her, by permission of her deceased husband, Woomesh Chunder Chowdhry, with the consent of his father, the said Bhyrub Chunder.

The family tree is as follows:—



Bhyrub died in Assin 1265, and his property went to his surviving sons, Gopal and Grish Chunder. On the death of Gopal, his share of the property devolved on his mother Juggodumba, who made it over by gift to her sole surviving son Grish Chunder, and, in company with the plaintiff, Gobind Soonduree, proceeded in the month of Pogs 1266 to Benares, intending to spend the remainder of her life in the holy city. The death of Grish Chunder, however, in 1267, appears to have made an alteration in their plans, and they returned home in 1267, and, in the following year, plaintiff presented a petition, stating that her husband had left her permission to adopt, and in 1269 instituted the present action.

The allegation of the plaintiff is to the effect that her husband Woomesh Chunder during his last illness in Kartick 1256, gave her, with the consent of his father Bhyrub Chunder, permission to adopt five sons in succession. This permission was first given verbally in the presence of witnesses, and was reduced to writing two days after, and duly signed by Woomesh Chunder, attested