

The 12th June 1866.

Present :

The Hon'ble C. B. Trevor and F. A. Glover,
Judges.

Putnee (Sale of).

Case No. 2540 of 1865.

Special Appeal from a decision passed by the Principal Sudder Ameen of East Burdwan, dated the 13th June 1865, reversing a decision passed by the Moonsiff of Kalnah, dated the 15th September 1863.

Woomesh Chunder Mookerjee (Plaintiff),
Appellant,

versus

Bissessuree Dabee and others (Defendants),
Respondents.

Mr. R. E. Twidale and Baboo Gopal Lall Mitter for Appellant.

Baboo Hem Chunder Banerjee for Respondents.

Suit to set aside sale of a moiety of a putnee tenure by a widow, and a subsequent and alleged collusive sale for arrears of rent under Regulation VIII., 1819. HELD that, if the defendant was in possession under a title from the widow, his subsequent purchase at the auction-sale 6 years before the death of the widow did not give him a new title against those claiming through the widow, especially when the plaintiff alleged that the defendant had allowed the putnee to fall into arrears, and then purchased it himself.

THE plaintiff in this case alleges that a putnee consisting of three mouzahs belonged in equal shares to his maternal grandfather and his maternal grand-uncle; that, on the former's death, his widow succeeded to his moiety, and afterwards sold it to the defendants. He adds that, in 1258 B. S. (six years before the widow's death, which took place in 1264 B. S.), the defendant fraudulently allowed the tenure to fall into arrear, and then purchased it himself at a sale under Regulation VIII. of 1819. Plaintiff, therefore, sues to set aside both the sale by the widow

and the subsequent and collusive sale under the Putnee Sale Law.

The defendant denies having purchased the land from the widow, and alleges himself to be a *bond fide* purchaser at auction for value under Regulation VIII. of 1819.

The first Court did not go into any of these questions, but reversed the sale on the ground of informality.

The Principal Sudder Ameen took up this case in connection with one brought by Radha Kant, the holder of the other 8 annas of the putnee, and, finding no proof that Radha Kant had ever paid his *quota* of the putnee-rent, gave a decree against him, and passed a similar order in the present case.

It is urged in special appeal, and we think with good reason, that the two cases are altogether dissimilar; that Radha Kant's case was that he had paid his *quota* but that other parties had collusively prevented the money from reaching the zemindar, and had so procured the tenure to be sold; whereas in this case the question to be decided was whether the defendant held possession under a title from the maternal grandmother, or not, previous to the putnee-sale, or did acquire his original title from that sale.

There can be no doubt that this was the issue to be tried; for, if the defendant was in possession under a title from the widow, it is evident that his subsequent purchase at the auction-sale of 1258, 6 years before the death of the widow, on account of non-payment of rent, would not give the purchaser a new title against those claiming through the widow, especially when the special appellant's allegation is that the defendant first allowed the putnee to fall into arrear, and then fraudulently purchased it himself.

The case is remanded accordingly with reference to the above remarks. Costs will follow the result.