

East Burdwan, dated the 9th August 1866, affirming a decision passed by Baboo Bhooputy Roy, Officiating Sudder Ameen of that District, dated the 13th November 1865.

Radhamohun Gowee (Defendant), *Appellant,*

versus

Mohesh Chunder Kotwal and others
(Plaintiffs), *Respondents.*

Baboo Nil Madhub Sein for Appellant.

Baboos Nobo Kishen Mookerjee and Umbica Churn Banerjee for Respondents.

The mere fact of a plaintiff not suing within 3 years of his attaining majority will not, in cases where Act XIV. of 1859 allows a general limitation of 12 years, bar his suit if brought within 12 years of the time when the cause of action accrued.

Peacock, C.J.—THE Principal Sudder Ameen seems to have misunderstood the case which he has cited from the 5th Vol. of the Weekly Reporter, p. 219. In that case it was held that the mere fact of a plaintiff not suing within 3 years of his attaining majority will not, in cases where Act XIV. of 1859 allows a general limitation of 12 years, bar his suit if brought within 12 years of the time when the cause of action accrued. That is to say, he may bring it either within 3 years from the time of his attaining majority, or within 12 years from the time when his cause of action accrued, whichever ended last.

In this case it is not found that the plaintiff brought his suit within 3 years after attaining majority, and, therefore, it was necessary for him to show that he brought his suit within 12 years from the time of his dispossession. The Principal Sudder Ameen has not entered into the question as to when he was dispossessed, and when the cause of action actually accrued, because he thought it unnecessary to do so; he having misapprehended the decision above quoted, and thought that, whenever the cause of action accrued, the plaintiff would be entitled to sue within 12 years from the time of attaining his majority.

The case must be remanded in order that the Principal Sudder Ameen may try whether the suit was brought within 3 years after attaining majority, or within 12 years from the time when the cause of action accrued.

The 3rd January 1867.

Present:

The Hon'ble F. B. Kemp and W. Markby,
Judges.

Sale in execution—Bona fide purchaser.

Case No. 520 of 1866.

Special Appeal from a decision passed by Mr. H. Richardson, Additional Judge of Jessore, dated the 15th December 1865, affirming a decision passed by Baboo Moodsoodun Ghose, Sudder Ameen of that District, dated the 21st December 1864.

Baboo Huronath Roy and others (Defendants),
Appellants,

versus

Mothooranath Acharjee (Plaintiff), *Respondent.*

Baboo Bungsheedhur Sein for Appellants.

Mr. R. E. Twidale and Baboo Nilmoney Sein for Respondent.

A, in satisfaction of a decree against *B*, caused the sale of a tenure styling it a *jote jumma*. *C*, the superior zemindar, purchased the tenure as such for 900 Rs., but, failing to pay the balance of the purchase-money, the tenure with the same description was resold and purchased by *C* for 1 rupee. *A*, on discovering his mistake in having advertized the property as a *jote jumma* when in fact it was a *Shamilat talook* (a more permanent and valuable holding), caused a sale of *B*'s rights and interests in the *Shamilat talook*, and, having purchased them himself, was put into possession. *A* then sued for rent under Act X. of 1859 when *C* intervened as in enjoyment of the rent, and *A*'s suit was dismissed. *A* now sues to establish his right to the *Shamilat talook*. HELD that *A* was entitled to succeed as he had acted *bona fide*, and that *C* could not be considered an innocent purchaser for a valuable consideration, but a purely speculative purchaser, as he must know that no such tenure as that which he purchased under the denomination of *jote jumma* had any real existence.

Kemp, J.—THIS was a suit to recover possession of a tenure called a *shamilat talook*, from which it was alleged that the plaintiff had been ejected by the defendant.

The plaintiff, in satisfaction of a decree held by him against one Gopeenath Roy, judgment-debtor, caused the sale of the tenure, the subject of this suit, styling it a "jote jumma." The defendant, who is also the superior zemindar, purchased the tenure under the above description for Rupees 900; but, failing to pay the balance of the purchase-money, the tenure with the same description was re-sold and purchased by the defendant for the nominal price of 1 rupee.

The plaintiff, the decree-holder, finding that he had made a mistake in advertizing the property as a *jote jumma* when in fact it was a *shamilat talook*, a holding of a

much more permanent character and consequently of far greater value, caused a sale of the rights and interests of the judgment-debtor in the said shamilat talook to be put up for sale and purchased them himself, and was put into possession. Subsequently, on the plaintiff suing for the rents under the provisions of Act X. of 1859, the defendant intervened and claimed to be in the enjoyment of the rents in virtue of his purchase of the rights and interests of the judgment-debtor in the jote jumma. The rent-suit of the plaintiff was dismissed—hence this suit to establish his right to the shamilat talook purchased by him in satisfaction of his decree.

The Court of first instance gave the plaintiff a decree, holding that he had proved the existence of the shamilat talook, and the non-existence of any jote jumma. The Judge confirmed this decree, observing that “the plaintiff had not, in his opinion, caused the re-sale with any intent to defraud the malik (in this case the defendant), but simply under a mistake of the character and grade of the tenure.” The Judge was satisfied that no such tenure as a jote jumma answering to the description of that purchased by the defendant existed; and that the defendant, who, from his position as owner of the parent zemindaree, ought to have known that no such jote jumma existed, purchased on speculation.

In special appeal it is contended that, the defendant having previously purchased the rights and interests of the judgment-debtor at a sale in execution of a decree held at the instance of the plaintiff, the re-sale and purchase of the same property by the plaintiff under a different denomination can neither avail the plaintiff, nor affect the title of the defendant.

We think that substantial justice has been done in this case. It is very clear that there is no such tenure as that purchased by the defendant for a nominal sum under the denomination of a jote jumma. The plaintiff, it is true, advertized the tenure under the above description; but of the fact of its non-existence, independently of the evidence adduced by the plaintiff, which has been found by both the Lower Courts to be satisfactory, we have the significant fact that the defendant, who is the zemindar, and who must have well known that no such tenure was recorded in his zemindaree serishtah, allowed his first purchase to fall through, and then purchased at a subsequent sale for a nominal sum.

The rights and interests of the judgment-debtor were alone sold, and nothing was guaranteed to the purchaser. The plaintiff acted “*bona fide*,” and the defendant cannot be called an innocent purchaser for a valuable consideration, as he was in a position to know, and must have known, that no such tenure as that which he purchased under the denomination of a jote jumma had any real existence. His purchase was a purely speculative one.

The appeal is dismissed with costs and interest payable by the appellant.

The 3rd January 1867.

Present :

The Hon'ble F. B. Kemp and W. Markby,
Judges.

Lunatics (Suits for)—Hindoo Law of Inheritance—Sale—Arbitration—Alienation by managing owner.

Regular Appeals from a decision passed by Baboo Nurottum Mullick, Principal Sudder Ameen of Bhaugulpore, dated the 19th March 1866.

Case No. 195 of 1866.

Goureenath and another (Defendants), *Appellants*,
versus

The Collector of Monghyr and another (Plaintiffs), *Respondents*.

Baboos Dwarkanath Mitter and Kishen Succa Mookerjee for Appellants.

Baboos Kishen Kishore Ghose and Juggodanund Mookerjee for Respondents.

Suit laid at Rupees 14,638-13-2-12.

Case No. 209 of 1866.

The Court of Wards of Monghyr, on behalf of Manick Ram and Salgram, the lunatics (Plaintiff), *Appellant*,

versus

Rughoobur Dyal and others (Defendants), *Respondents*.

Baboos Kishen Kishore Ghose and Juggodanund Mookerjee for Appellant.

Baboos Dwarkanath Mitter and Kishen Succa Mookerjee for Respondents.

Case No. 211 of 1866.

Koer Sheopershad Narain (one of the Defendants), *Appellant*,

versus

The Collector of Monghyr and others (Plaintiffs), *Respondents*.