

deducting the *puteet* lands for which the plaintiff seems to have claimed no rent.

The decree of the Lower Courts will be modified to that extent.

Parties will bear their own costs in this suit.

Mookerjee, J.—I concur.

The 19th December 1870.

Present:

Hon'ble L. S. Jackson and F. A. Glover,
Judges.

Death of appellant—Representation—Letters of administration.

Case No. 54 of 1870.

Regular Appeal from a decision passed by the Judge of Sarun, dated the 28th December 1869.

Munnoo Lall (one of the Defendants),
Appellant,

versus

Saheb Perhlad Sein (Plaintiff) and others
(Defendants), *Respondents.*

Baboo Kalee Prosunno Dutt for
Appellant.

Baboo Mohesh Chunder Chowdhry for
Respondents.

An appeal having come on for hearing, the death of the appellant was intimated to the Court, and the case allowed to stand over. It was again set down for hearing nearly six months after, and an order made that it should be brought up a fortnight later. On its being called up again, a petition was presented on the part of the Administrator-General for a month's postponement, on the ground that, although letters of administration had been granted, the requisite funds had not been raised.

Held that, the appeal having been filed and the vakeel instructed and paid, the Administrator-General would have been allowed to appear, although regular letters had not been taken out; but as the application had not been made within reasonable time, the appeal was dismissed.

Jackson, J.—THE decision of the Zillah Judge in this case was passed on the 28th December 1869. The appeal was preferred on the 4th April of the present year. The case, it seems, came on for hearing on the 18th July last, when it stood over for this, amongst other reasons, that the death of the appellant was then intimated to the Court. The case was again set down for hearing on the 5th of this month, and an order was

made—"Let this case be brought up on the 19th instant, and by that time, if no one appears to represent the appellant, the appeal will be dismissed." Now, the case being called up again to-day, a petition is presented on the part of the Administrator-General, who applies that the case may stand over again for one month on the ground that, although the Court has granted letters of administration upon the application of the parties made so long ago as the month of August last, the requisite funds have not been raised, and the Administrator-General does not find himself in a position to act. The regular letters of administration have not been taken out, but an order has been granted.

Now, in this case, the appeal has been actually filed, and the vakeel, I understand, has received his instruction and also his fee; and we should have had no hesitation in permitting the Administrator-General to appear in this case, although regular letters of administration have not been taken out; but as it appears to me that the application has not been made within reasonable time, by any person claiming to be the legal representative of the deceased appellant, I think the appeal ought to be dismissed with costs chargeable to the estate of the deceased.

Glover, J.—I concur.

The 20th December 1870.

Present:

The Hon'ble L. S. Jackson and F. A. Glover,
Judges.

Act X. of 1859—Execution-sale—Revenue Courts—Jurisdiction.

Case No. 119 of 1870.

Regular Appeal from a decision passed by the Subordinate Judge of Gya, dated the 22nd March 1870.

Tekaet Bhao Narain Deo (Defendant),
Appellant,

versus

The Court of Wards on behalf of the estate of the late Maharajah Ram Narain Deo (Defendant), *Respondent.*

Mr. R. E. Twidale for Appellant.

Baboos Unnoda Pershad Banerjee and
Juggodanund Mookerjee for Respondent.

Calls into question the doctrine laid down by a Division Bench at page 147 of the Special Number of the Weekly Reporter, *vis.*, that when a sale has taken place by order of the Collector in execution of a decree under Act X. of 1859, a civil suit for the purpose of questioning the regularity and propriety of the proceeding is taken away, as well as anything in the shape of an appeal.

Where circumstances indicate not merely irregularity, but irregularity brought about by the contrivance of the decree-holder, the Civil Court has jurisdiction to set the sale aside, and is right in doing so.

In making a decree to set aside such an execution-sale, the Court is bound to make provision for the decree-holder's claim being satisfied.

Jackson, J.—In our opinion, the decision of the Lower Court ought, upon the main part of it, to be affirmed.

The property to which the suit relates, which is a mokurruree granted to Maharajah Ram Bahadoor Narain Deo, who is now a lunatic, may be broadly stated to have been put to sale and sold by the Collector in execution of a decree against these Maharanees, as the committee of the person of the lunatic, for arrears of rent. The defendant, Tekaet Bhao Narain Deo, was the purchaser of that decree, and he sued out execution, making the application against the Maharanees and also against the Court of Wards, as manager of the estate; but the property which the Court was moved to sell was described as a mokurruree tenure belonging to the Maharanees as custodians of the lunatic Rajah.

The property so described was ordered to be sold on the 14th September 1868. On the 7th of the month, a week before the date specified, a petition was put in on part of the Court of Wards, objecting, amongst other things, that the Maharanees had no right, title, or interest in the mokurruree in question, and praying, therefore, that the property might not be sold.

This objection, it seems, was overruled, and the property was brought to sale on the 14th September; but on that date it seems that not a single bidder for the property appeared, and on a verbal representation from the mooktear of the decree-holder that his agent, who had been in attendance up to that time, had gone to another place, and would attend afterwards, the Collector appears to have ordered that the sale should be postponed until the 21st September, and of that postponed sale no notification was issued, but on that day the property was put up for sale again. The decree-holder and his mooktear, and one other person named Tikum Lall, appear to have bid for the property, and it was knocked down for the sum of 6,100 rupees.

It appears that the mokurruree was originally granted upon a bonus or consideration of 14,500 rupees; and the superior landlord, who was a witness in this case, Sham Lall Mitter, deposed that, to the best of his knowledge and belief, the value of the under-tenure in question was 70 or 80 or 90 thousand rupees.

Two questions have been raised before us on this appeal. The first is whether the suit was cognizable by the Civil Court, as the defendant maintains it was not; and the second, whether any ground for setting aside the sale has been made out; and we have been referred to Sutherland's Full Bench Rulings, otherwise called the Special Number of the Weekly Reporter, page 147, and to a Ruling of the Full Bench of this Court in V. Weekly Reporter, page 20, Act X. Rulings.

The first-mentioned of the cases goes the length of laying down that, when a sale has taken place by order of the Collector in execution of a decree under Act X. of 1859, by the terms of Section 150, a civil suit for the purpose of questioning the regularity and propriety of the proceedings in such sale is expressly taken away; and the Judges also point out that by the terms of Act X. anything in the shape of an appeal is also taken away in such a case. So that, if by mistake or inadvertence a Collector should have improperly sold property of the very highest value in execution of a decree of the smallest amount, the person whose property is so sold is without remedy of any kind whatever, unless he should be able to establish that there has been such fraud in obtaining the decree or carrying out process of execution that the Civil Court would be entitled to set aside the sale on that ground.

The Full Bench decision, which we have referred to in V. Weekly Reporter, confirmed generally the view taken in that other case; but it expressly ruled that in case of fraud the Civil Court is competent to interfere.

We confess that, if it were necessary to the decision of this case, we should be disposed to invite further consideration by the Full Bench of the doctrine laid down in the case reported in the Special Number of the Weekly Reporter. It appears to us little short of monstrous to hold that in such circumstances as we have stated, the order of the Collector bringing to sale perhaps a most valuable immoveable property should be absolutely final beyond the reach of

revision or appeal, and beyond being questioned in the Civil Courts. But we do not think it necessary to raise that question, because it seems to us that the circumstances of this case bring the matter fully within the ruling of the Full Bench.

We may assume that the decree in this case was obtained correctly. The parties we have now to do with were not the parties in that suit; but the circumstances under which this property was brought to sale indicate what may be called fraud, such as would entitle the Court to set aside the proceedings. This property was put up for sale under the description of a mokurruree tenure belonging to the Maharanees. The blot in this description was pointed out by the Court of Wards. It was open to the parties then, and it was open to the Collector, to set this right by amending the notification and giving this property its correct description. That they omitted to do, and the result of that is, we think, pretty plainly evidenced by what took place on the 14th September, on which day no bidder attended at the sale. It cannot be believed that, if the property had been fairly described, not a single person would have attended to purchase what appears to be a most valuable estate. And when we look to the sequel of place on that date, we find that a mooktear of the decree-holder went to the Collector and obtained an order, which was not proclaimed and notified, postponing the sale for a week, and on that day the decree-holder himself, the mooktear of the decree-holder, and a third person of whose entity, solvency, and position we have no information whatever attended before the Collector, and the decree-holder bought this property for what seems to be a most inadequate price. Under these circumstances, it seems quite clear that there had been contrivance, and what we may call fraud, practised in order to have this property sold below its real value.

A question has been raised as to whether the plaintiff had given evidence as to what the value of the property was. It was objected that the witness Sham Lall Mitter, who stated his belief as to the value of the property, did not disclose what his means of knowledge were, and did not appear to be exactly informed regarding the returns on the profits of the mokurruree. But it seems to us very unnecessary to ask a witness, who is speaking of a portion of his own property, how he comes to

know what the value of his property is or about what it is; and it is also quite conceivable he may not know precisely what profit the tenant may be making, nor does he in his deposition in this case pretend to describe the exact value of the property. He gives a wide margin, and states it to be somewhere between 70 and 90 thousand rupees.

Finally, it was suggested that the low price at which the property was sold did not appear to be the result of the irregularity. We think it was fairly the result. The circumstances which we have already stated appear to be so clear on that point that it is unnecessary to refer to them again. But it seems to us that not merely was there irregularity, but irregularity brought about by the contrivance of the decree-holder. Therefore, we think it clear that the Civil Court had jurisdiction, and was right in ordering the sale to be set aside. Then there are other circumstances which we ought not to lose sight of. It is clear that the Court of Wards have been very ill served, and have acted in a mistaken manner throughout. There can be no doubt, we think, that, on the rights of the case and in the interest of the lunatic, the Court of Wards ought, on receiving intimation that the decree was outstanding, and that the party was proceeding to execute, to have put in the amount due under the decree. That would have put a stop to all these proceedings, would have saved the parties much unnecessary expense, and avoided this litigation.

We think the objections taken by the Court of Wards under the advice of the person who acted for them were not the real objections which ought to have been taken, but were of a technical, and we may say frivolous, character. We also think that the Court of Wards ought, in bringing this suit, to have stated their willingness to do equity towards the purchaser, by way of repaying the amount which he had paid as purchase-money, and also to have satisfied the decree. Further, we think that the Court below, in making a decree in favor of the plaintiff, was bound to have made provision for the decree-holder's claim being satisfied.

Under these circumstances, although the decree of the Court below was in the main right, it cannot be denied that the defendant was justified in bringing the present appeal.

For these reasons, we think, we must affirm the judgment of the Court below, but each party must bear their own costs.

The purchase-money must be repaid with interest at 12 per cent. per annum, that being the rate of interest allowed in the decree; and the plaintiff may satisfy the decree for rent before the estate is released from attachment.

The 4th January 1871.

Present:

The Hon'ble E. Jackson and Onookool Chunder Mookerjee, *Judges.*

Review—Limitation.

Poresh Nath Roy, *Petitioner,*

versus

Gopal Kristo Deb and others, *Opposite Party.*

Baboo Woomesh Chunder Banerjee for Petitioner.

Baboos Romanath Bose and Grish Chunder Ghose for Opposite Party.

The time during which an application for review is pending is not to be taken into account within the 90 days allowed for appeal.

Jackson, J.—We think the decision of the Judge of Sylhet on the appeal of Poresh Nath Roy, refusing to admit the appeal, is contrary to law, and must be set aside. The decision against which Poresh Nath Roy appealed is dated the 28th December 1869. For a review of that decision, Poresh Nath Roy filed an application on the 6th January 1870. An order was passed rejecting that application on the 4th April 1870. Poresh Nath Roy thereupon appealed to the Judge on the 21st April 1870. The ground upon which the Judge has rejected the application is not clearly stated in his order. He states that, if the application had been made on the 14th, he might have admitted it; but as it was made on the 21st, he rejected it.

We do not understand in what way the petitioner would have been benefited by making an application on the 14th instead of on the 21st. In either case, if the time during which the application for review was pending be deducted, Poresh Nath Roy was within time. If, on the other hand, that time is to be taken into account, Poresh Nath Roy is beyond time.

It has been decided by a Full Bench of 14 Judges (to be found in II. Weekly Reporter, page 36), and which was afterwards followed by another Full Bench of this Court* (to be found at page 23 of the Revenue, Civil, and Criminal Reporter of the 31st May 1867), that the time during which the application for a review is pending is not to be taken into account within the 90 days allowed for appeal. Following these decisions, Poresh Nath Roy was within time in presenting his appeal to the Judge. The Judge must, therefore, admit the appeal, and pass orders upon it. The order rejecting it is set aside.

The 10th January 1871.

Present:

The Hon'ble J. P. Norman, *Officiating Chief Justice,* and the Hon'ble G. Loch and W. Ainslie, *Judges.*

Mesne-profits—Valuation of claim—Execution.

Case No. 227 of 1870.

Miscellaneous Appeal from an order passed by the Subordinate Judge of Jessore, dated the 4th June 1870.

Gooroo Doss Roy and another (Judgment-debtors), *Appellants,*

versus

Bungshee Dhur Sein and others (Decree-holders), *Respondents.*

* 7 W. R., *Civil*, p. 529.