

bona fide, the circumstances and probabilities are to be carefully considered and weighed. It should be seen what could have been the object for the purchase by the vendees, whether the purchase-money really belonged to the purchasers, or was the money of the vendors themselves paid into the purchaser's hands to be repaid to the vendor before the attesting witnesses—whether possession was taken by the purchasers after the purchase, or what explanation, if any, is given for not taking possession of properties for which it is alleged valuable consideration has been paid. Here, in this case, besides the near relationship of the parties, the absence of any satisfactory explanation as to why possession was not taken, notwithstanding that the purchases were made 6 or 7 years ago, the purchaser buying an undivided one-fourth share, the exact share of each of their own relatives who are proved to have been in debt at the time there are many other badges of fraud which throw the greatest suspicion on the *bona fides* of the purchases made by the defendant. No evidence has been adduced to show that the money belonged to the purchasers; that they had any object in the purchases; that any of them got actual possession or ever demanded rent or received it; the purchasers themselves do not come forward to speak to the honesty of their purchase: they merely content themselves by examining some witnesses who are either strangers to the family, and had been only called on to witness the execution of the deed or are dependants of the vendors, who speak in such a vague and general way as to the passing of the consideration that we are unable to place any credence on their testimony. On the whole circumstances of this case, we come to the conclusion that the purchases are not true and honest; that the consideration-money which the witnesses speak of, if ever it passed, belonged to the

vendors themselves; and that the judgment-debtors are the parties beneficially interested in the purchase ostensibly made in the names of their relatives. We, therefore, uphold the decision of the first Court, and dismiss the appeal with all costs.

Jackson, J.—I also think that the appeal should be dismissed on the grounds stated by my learned colleague.

The 6th January 1871.

Present:

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

Sale for arrears of rent—Notice—Jurisdiction—Section 13, Act VIII. (B. C.) of 1865.

Case No. 1365 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Chittagong, dated the 19th April 1870, reversing a decision of the Moonsiff of Satkaniyah, dated the 17th November 1869.

Nugendro Chunder Ghose and another (two of the Defendants), *Appellants,*

versus

Musruff Bibee (Plaintiff), *Respondent.*

Ba. Nil Madhub Sein for Appellants.

Baboo Sane Madhub Dutt for Respondent.

The fact of no notice having been served in the *mo-fussil* is sufficient ground for setting aside a sale for arrears of rent.

An appeal to the Collector is not necessary as a condition precedent to a suit in the Civil Court under Section 13, Act VIII. (B. C.) of 1865.

Mookerjee, J.—The point urged in this special appeal is that the Judge was wrong in not trying the question whether the rent had been paid by the plaintiff as alleged by him, and that no suit lies in the Civil Court under Section 13, Act VIII. of 1865, B. C., when there was no appeal to the Collector on the ground of irregularity.

As regards the first point, we find there were two objections raised by plaintiff before the Courts below; first no notice had been published, as requi

law, in the mofussil; and, secondly, that he paid rent for the period for the arrears of which the sale had taken place. If, as the Judge finds, there is reason to believe that no notice had been issued in the mofussil, that ground was of itself sufficient to set aside the sale.

As regards the question under Section 13, Act VIII. of 1865, B. C., we find that the law does not lay down that the plaintiff must appeal to the Collector, and that this step by the plaintiff is a condition precedent to his having recourse to the Civil Court for his redress. An appeal has been provided by law in order that parties injured may resort to it for invalidating the sale; but it certainly does not say that the parties cannot come to the Civil Court to set aside the sale, unless there was previously an appeal to the Revenue Authorities. We think the Judge is right in setting aside the sale, as having been held without any service of notice in the mofussil as required by law, and we see no reason to interfere with his decision.

The appeal is dismissed with costs.

The 6th January 1871.

Present:

The Hon'ble F. A. Glover and Dwarkanath Mitter, *Judges*.

Objections—Section 348, Act VIII. of 1859.

Case No. 1588 of 1870.

Special Appeal from a decision passed by the Subordinate Judge of Hooghly, dated the 20th June 1870, reversing a decision of the Moonsiff of Serampore, dated the 30th March 1870.

Thakoor Dass Goshamee and others
(Defendants), *Appellants*,

versus

Gopee Kristo Goshamee (Plaintiff),
Respondent.

Baboos Hem Chunder Banerjee and Bama Churn Banerjee for Appellants.

Baboos Obhoy Churn Bose and Mohendro Lall Mitter for Respondent.

Objections under Section 348, Act VIII. of 1859, may at any time in the course of hearing of an

Mitter, J.—We think that the Lower Appellate Court was wrong in refusing to entertain the objections urged by the special appellants under the provisions of Section 348. The law says that such objections can be urged at any time in the course of the hearing, and the special appellants were, therefore, entitled to bring them forward before the case was closed on their side.

We, therefore, remand this case to the Lower Appellate Court to try it *de novo*, after hearing all the objections urged by the special appellants under Section 348.

The costs will abide the ultimate result.

The 6th January 1871.

Present:

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

Jurisdiction—Zemindar—Ijardar.

Case No. 1372 of 1870 under Act X. of 1859.

Special Appeal from a decision passed by the Officiating Judge of Mymensingh, dated the 25th April 1870, reversing a decision of the Deputy Collector of that District, dated the 30th December 1869.

Mussamat Gobind Monee and others (Plaintiffs), *Appellants*,

versus

Rajendro Kishore Chowdhry and others
(Defendants), *Respondents*.

Baboo Sreenath Banerjee for Appellants.

Baboos Sreenath Dass and Bhugobutty Churn Ghose for Respondents.

A suit on the ground of illegal ejection effected by the zemindar or by a servant acting under him cannot be brought under Act X. of 1859, when the defendant is the ijardar entitled to the rents.

Jackson, J.—We think this case must be remanded to the Judge for re-trial. The plaintiff, alleging himself to be a tenant of a certain plot of land, has brought this suit against the defendant, who, the plaintiff alleges, is the ijardar of the village, and is entitled to receive rent for the land, and who has illegally ejected him from his jote.

The first Court, *viz.*, the Deputy Collector, after investigation on the spot, has decided that the defendant was the ijardar of the