

and the defendant himself so treated him. And we do not consider that the defendant can now, or that he could in the Lower Appellate Court, take an objection which does not go to the merits of the suit, and which only amounts to an objection that there has been some irregularity in the proceedings. After what he has done, the defendant is bound to accept Mr. Lloyd as plaintiff in the suit in the place of Huro Chunder.

It was also objected that even Huro Chunder's right to maintain this suit had not been made out, because when the pottah was granted to Major Fitzgerald, the Government were not in possession, and Major Fitzgerald himself was never in possession; and therefore the Government could not give to him, nor could he pass to any one else, the right to bring this suit for possession.

It is sufficient to dispose of this point to say that the grant of the pottah by Government of Major Fitzgerald and the assignment of the pottah to Huro Chunder having been both proved, and the Government being a party to this suit, and consenting to the title of Huro Chunder, this suit for possession by Huro Chunder may be maintained.

The result, therefore, will be that this special appeal must be dismissed with costs.

The 26th April 1875.

Present :

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

Execution-sale of deceased Debtor's Estate—
Widow's Interests.

Case No. 106 of 1874.

Regular Appeal from a decision passed by the Subordinate Judge of Patna, dated the 12th February 1874.

Mussamut Nuzeerun and others (Plaintiffs),
Appellants,

versus

Moulvie Ameerooddeen and others
(Defendants), *Respondents.*

Mr. M. L. Sandel and Moonshee Mahomed Yusuf for Appellants.

Mr. C. Gregory and Moulvie Abdool Barea for Respondents.

Where the rights and interests of a widow in her husband's estate are advertised for sale, and the advertisement (*i. e.*, the sale-notification) expressly refers to a

decree against the husband as that in satisfaction of which the sale is being made, what passes at the sale is not the right and interest of the widow, but the entire estate of the deceased judgment-debtor.

Glover, J.—THE plaintiffs in this suit are the heirs of one Meer Hosseik Nowab. In the other and analogous suit (No. 29, original suit), which has not been appealed, the heirs of Meer Mahomed Nowab were plaintiffs.

Hossein Nowab and Mahomed Nowab were brothers, and owned, each of them, a 1 anna 8d. 11c. 8 dunts share in five villages Mouzah Karai, &c. In January 1833, their whole estate was sold for arrears of Government revenue and purchased by Roy Bunsidhar, who afterwards resold to Mussamut Asmutoonnissa, the wife of Hossein Nowab, and to Mussamut Bakshan, the wife of Mahomed Nowab, the shares which had aforesaid belonged to their husbands.

It seems to be admitted on all hands that these sales to the wives were mere benamee transactions, and that the ownership of the shares remained as before in Hossein Nowab and Mahomed Nowab.

The brothers died shortly after. In 1860 Mussamut Wasla and others, who held a decree against Hossein Nowab and Mahomed Nowab, took out execution and put up for sale (after attachment) the rights and interests held by the widows, Asmut and Bakshan.

These ladies first objected under section 246 of the Civil Procedure Code, and failing there brought regular suits to contest the decree-holder's right to sell the shares in question as the property of their judgment-debtors; they claimed them as their own under the sale by Roy Bunsidhar.

These suits were dismissed, and the defendant-purchasers at the sale retained the possession which they had acquired on the 31st January 1861.

The present suit was brought by the heirs of Hossein Nowab other than the widow Asmutoonnissa, and excluding her share on the 31st of January 1873 (one day within 12 years of the defendant's possession) to recover their share of the paternal estate, on the ground that the execution-sale passed only the rights and interests of Mussamut Asmutoonnissa, which amounted to the share of her husband's property and not the entire estate of Hossein Nowab.

The Subordinate Judge dismissed the plaintiff's suit on the ground that, as Mussamut Asmutoonnissa had been given out to the world as the owner of the property by

the father, the sons, and daughters could not deny her interest, and that the decree-holders were justified in electing to proceed against the only one of Hossein Nowab's heirs who appeared to hold property, and that Mussamut Bakshan's right and interest was the entire share that stood in her name.

We think that the appeal must be dismissed, and the Subordinate Judge's decision upheld, although not for the reasons given by the Subordinate Judge.

The sale-certificate is not on the record, but the notification of sale has been read to us. It sets forth the names of the debtors and gives a list of the villages. It likewise mentions that the rights and interests of those of the debtors therein named are to be sold; but it, at the same time, refers to the decree dated 29th May 1858, for the satisfaction of which the sale was to be made. This decree was against the brothers, Hossein Nowab and Mahomed Nowab.

And, when possession was given, we find, from the proceeding of February 4th, 1861, that what was made over to the purchaser was the entire right and title in the property sold which belonged to the original owner (*asl malik* are the words used).

It has been held in the case of *Ishan Chunder Mitter vs. Buksh Ali Sowdagur** that, where an advertisement of sale refers to and specifies the decree in satisfaction of which the sale is being made, the estate sold would be the right and interest of the owner of the property against whom the decree was made. In the case now quoted, the widow's right and interest only was advertised to be sold; but this Court held that, as the sale-advertisement specified the decree which was one against the husband, the widow was proceeded against in her representative character only, and that what passed at the sale was the husband's interest, in other words, the entire property. And the Judicial Committee of the Privy Council in March 1872 (The Manager of the Durbah Estate *vs.* Moharajah Koonwar Ramaput Singh, 10 Ben. 294†) expressly approved of and upheld the principle expressed by Chief Justice Sir Barnes Peacock in *Ishan Chunder Mitter vs. Buksh Ali*

There is no doubt a contrary ruling in *Sheikh Abdool Kureem vs. Syad Jan Ali*, 18 Weekly Reporter, 55, but this case was decided before the judgment of the Privy Council was known.

* 1 Marsh. Rep., p. 614.
† 17 W. R. (Civ. Rul.), p. 459.

We think that we must follow the precedent laid down in *Ishan Chunder Mitter's* case, and declare that, as the sale-notification expressly referred to the decree against Hossein Nowab as the decree in satisfaction of which the sale was being made, what passed at the sale was, not the right and interest of the widow and joint heiress *Asmutoonnissa*, but the entire estate of the debtor, Hossein Nowab.

And this being our opinion, it is unnecessary to go into the question as to whether all the heirs were represented in the suits brought to contest the sale, or to consider the cross-appeal of the defendants on the issue of limitation.

The Subordinate Judge, however, has made a mistake of detail which must be corrected. He tried the two suits together, and made one judgment do for both. The consequence is that the plaintiffs in this case have been made to pay a double set of costs, whereas there was only one set of defendants. It was in the other suit that the defence was separate, and in which a double set of costs was properly levied. The Subordinate Judge's decree will be altered accordingly. With this modification the appeals are dismissed with costs.

The 27th April 1875.

Present:

The Hon'ble C. Pontifex and E. G. Birch,
Judges.

Rent-suits—Admitted Rates—Cesses—Rent in kind.

Case No. 2109 of 1874.

Special Appeal from a decision passed by the Judicial Commissioner of Chola Nagpore, dated the 27th May 1874, reversing a decision of the Assistant Commissioner of Lohardugga, dated the 24th December 1873.

Budhna Orawan Mahtoon (Defendant),

Appellant,

versus

Jemadar Baboo Juggessur Doyal Singh
(Plaintiff), *Respondent.*

Baboo Taruck Nath Sen for Appellant.

Baboos Unnoda Pershad Banerjee and Aubinash Chunder Banerjee for Respondent.

In a suit for arrears of rent, where the account-books put in by the plaintiff to establish the rates claimed by him were held by the Courts below to be unreliable, the