

fresh evidence, if the evidence already on the record be found to be insufficient for the determination of this question. But of course if defendants are allowed to adduce fresh evidence, leave must be given to the plaintiffs to produce counter-evidence upon the point. Costs to abide the result.

Case remanded.

Before Mr. Justice Jackson and Mr. Justice McDonell.

SREENARAIN BAGCHEE (DEFENDANT) v. SMITH AND OTHERS
(PLAINTIFFS).*

1879
Feb'y. 25.

Subordinate Tenure—Setting aside Sale of superior Tenure, effect of.

The holder of a chahar-patni, or other subordinate tenure, whose tenure had been brought to an end by the sale for arrears of rent of a superior tenure on which his own was dependent, is, upon such sale being set aside, remitted to his previous position, and is entitled to recover possession of the land comprised in his chahar-patni from the purchaser or any assignee of the purchaser at such sale, and he can do so notwithstanding that he himself took a dar-patni, including the land he had held as chahar-patnidar, from the purchaser at such sale, and that this dar-patni was afterwards sold in execution of a decree against himself, and purchased at such last-mentioned sale by the person whom he seeks to evict on the strength of his original title.

THE plaintiffs in this case, Patrick Smith and others, had been chahar-patnidars of certain lands in Turruff Ramgourpore, which formed the subject-matter of this suit. The patni on which their tenure was dependent, there being intervening se-patni and dar-patni tenures, had been sold by the Collector for arrears of rent, and purchased by one Tarachand Biswas. The plaintiffs then, to avoid eviction, took, from Tarachand Biswas, a new dar-patni of the entire turruff within which their chahar-patni had been comprised. Thereupon the Land Mortgage Bank, having a decree against the plaintiffs, took out execution and sold the entire turruff, and the defendant Sreenarain Bagchee became the purchaser at such sale. Afterwards the sale by the Collector of the patni, which had carried with it all of the chahar-patni as well as the intermediate tenures, was set aside, and all these

Appeal from Original Decree, No. 329 of 1877, against the decree of the Officiating Subordinate Judge of Nuddea, dated the 3rd August 1877.

1878
SHOSHI
MOHUN PAL
CHOWDHRY
v.
NORO
KRISHTO
PODDAR.

1879
 SREENARAIN
 BAGCHEE
 v.
 SMITH.

tenures having come again into being and force, the plaintiffs in this suit now sought to recover possession as chahar-patnidars from the defendant, asserting that whatever rights the latter might have acquired, as purchaser at the sale in execution of the decree of the Land Mortgage Bank, had been brought to an end when the sale of the patni by the Collector was set aside.

The lower Court decreed the plaintiffs' claim.

From this decision the defendant appealed to the High Court.

Baboo *Mohini Mohun Roy* and Baboo *Kissory Mohun Roy* for the appellant.

The Hon'ble *G. H. P. Evans* for the respondents.

The judgment of the Court was delivered by

JACKSON, J. (who, after shortly stating the facts, continued):—
 The ground on which the defendant now, on appeal before us, seeks to resist the claim of the plaintiffs, is, that by the application of a portion of the purchase-money paid in respect of the entire turruff, which afforded satisfaction in part of the plaintiffs' mortgage debt, he has conferred a benefit upon the plaintiffs, and, consequently, the plaintiffs, before they can recover possession of the chahar-patni, ought to be on terms and compelled to repay him certain portion of the purchase-money.

It appears to us that the defendant is not in that position. That which he purchased was not the chahar-patni, nor did the Land Mortgage Bank proceed against the chahar-patni, which had been mortgaged to it. The Bank availed itself of its right to execute its decree generally, and sold the dar-patni, and by name the dar-patni granted by Tarachand Biswas. The defendant, in purchasing that along with other parts of Turruff Ramgourpore, took his chance. He has not in fact conferred any benefit upon the plaintiffs in respect of saving this particular property from sale; on the contrary, there is nothing, as far as we can see, to prevent the Land Mortgage Bank from taking this chahar-patni in execution at any time; and even if he had, it appears to us that this was merely a voluntary payment. It was not a payment such as the plaintiffs were under

any obligation, express or implied, to recognize. That being so, the case comes within the observation of the Judicial Committee in the case of *Ram Tuhul Singh v. Biseswar Lall Sahoo* (1). The observations are in page 143. Their Lordships say:—"But even if this were true, it is not in every case in which a man has benefited by the money of another, that an obligation to repay that money arises." It was a voluntary payment. In fact the greatest difficulty would arise in apportioning, out of the whole sum, the proper amounts which had been set against this particular property. He bought an entire turruff, and by causes, no doubt beyond his control, part has gone out of his hands. The appeal must be dismissed with costs.

1879
SREENARAIN
BAGCHEE
v.
SMITH.

Appeal dismissed.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Prinsep.

RAI NARAIN DASS (DEFENDANT) *v.* NOWNIT LAL AND BUNWARI LAL (PLAINTIFF AND DEFENDANT No. 2).*

1879
March 17.

Hindu Law—Mitakshara—Execution-Sale of Interest of one Member of a Joint Family.

The principle laid down in the case of *Deendyal Lal v. Jugdeep Narain Singh* (2) that the right, title, and interest of a Hindu father in a joint family estate under the Mitakshara law can be attached and sold in execution of a decree obtained against him personally, is applicable to the right, title, and interest of any member of the joint family, and is not confined to the interest of the father alone.

THIS was a suit brought by the father of a joint Hindu family to stay the sale of certain property belonging to the joint family, which had been attached under a decree obtained by the defendant No. 1, in a suit brought against the plaintiff's son, the defendant No. 2, to recover certain sums of money advanced by him.

(1) L. R., 2 In. Ap., 131.

* Appeal from Original Decree, No. 312 of 1877, against the decree of Baboo Gobind Chunder Sandyal, Subordinate Judge of Patna, dated the 16th August 1876.

(2) 4 L. R., In. Ap., 247; S. C., I. L. R., 3 Calc., 198.