

Before Mr. Justice Jackson and Mr. Justice Tottenham.

ABDOOL BARI (ONE OF THE DEFENDANTS) v. RAMDASS COONDOO
AND OTHERS (PLAINTIFFS).*

1878
June 14.

*Sale for Arrears of Revenue—Unrecorded Co-Partner, Purchase by—
Encumbrances—Act XI of 1859, ss. 37, 53.*

A in November 1862 purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the Government revenue in January 1863, and the entire estate was put up for sale by the Collector, and purchased by A on the 29th March 1863. *Held*, that A at the time of his second purchase was an unrecorded co-partner of an estate within the meaning of s. 53 of Act XI of 1859, and therefore took the entire estate subject to all the encumbrances existing at the time of the Government sale for arrears of revenue.

THIS was a suit for a declaration of right to, and possession of, certain lands held by the defendants as non-resident cultivating ryots.

The plaintiff alleged that the plaintiff had purchased the entire estate, of which the disputed lands formed a part, on the 29th March 1863, at an auction-sale for arrears of Government revenue, and as such auction-purchaser, the plaintiff was entitled to possession of the lands held by the defendants. In their written statement, two of the defendants, one of whom subsequently appealed, contended, *inter alia*, that, in the month of Kartic 1269 (November 1862), the disputed lands were purchased by the plaintiff at a sale held in execution of a decree against one Krishna Churn Dass, the then proprietor of the entire estate; that the plaintiff having failed to pay the Government kist, the entire estate was sold for arrears of revenue, and purchased (as admitted) by the plaintiff himself on the 29th March 1863; that, at the time of such purchase, the plaintiff

* Special Appeal, No. 553 of 1877, against the decree of H. Muspratt, Esq., Judge of Zilla Sylhet, dated the 8th of December 1876, affirming the decree of Baboo Mohesh Chunder Sen, Subordinate Judge of that District, dated the 13th of September 1875.

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was already a co-partner of the estate within the meaning of s. 53 of Act XI of 1859, and therefore took such estate subject to all encumbrances existing thereon at the time of the sale for arrears of Government revenue.

It was further shown in the course of the suit that the sale in November 1862, in execution of the decree against Krishna Churn Dass, was not confirmed till the 9th February 1863; that default in the payment of Government revenue took place on the 19th January 1863. The Court of first instance was of opinion that the sale in November 1862 not having been confirmed till the 9th February 1863, subsequent therefore to the date when default was made in the payment of Government revenue, the plaintiff could not be said to have had, at the time of such default, sufficient right or interest in the estate to constitute him an unrecorded co-partner of the estate within the meaning of s. 53 of Act XI of 1859, and thereupon gave the plaintiff a decree.

This judgment, for identical reasons, was upheld by the lower Appellate Court.

One of the defendants appealed to the High Court.

Moulvie *Serajul Islam* for the appellant.

Baboo *Bhyrub Chunder Banerjee* for the respondent.

The judgment of the Court was delivered by

JACKSON, J.—The object of the present suit was to recover from the defendant certain land which he (defendant) was holding within the taluk purchased by the plaintiff at a revenue-sale on the 29th March 1863. As the case comes before us in special appeal, the defendant claims the benefit of s. 53 of Act XI of 1859, it having been found that the defendant is a non-resident cultivating ryot, having in that capacity also a claim to be protected under s. 37 of the same law. The Courts below have decided against him on both grounds; and the chief point which we have to consider is, whether s. 53 really applies to the present case or not. The facts are these:—Previous to the revenue-sale, and previous to the occurring of

the default which brought about the revenue-sale, a default having arisen from non-payment of the revenue payable on the 19th January 1863, the plaintiff had purchased, at an execution-sale in the Civil Court at Sylhet, certain mouzas, which were held and enjoyed by the ex-zemindar Krishna Churn, in the year 1269,—that is to say, about the latter part of 1862. That sale, however, was not immediately confirmed, because objections were raised, and the confirmation of the sale took place on the 9th February 1863. It is alleged, and perhaps truly, that the objections were abandoned by reason of a default in the payment of revenue having occurred. It may also be true that default in the payment of revenue had taken place by reason of the execution-sale. But in any case it is clear that the plaintiff, when he bid for this property at the revenue-sale, *viz.*, in March 1863, was at that time, by virtue of the sale which had been finally confirmed in execution of decree, owner of the rights of one of the co-sharers in the estate,—that is to say, a co-partner, and I think it also clear that in virtue of such co-partnership, although the certificate of sale was not in his hands, he might, if he chose, on or before the 19th January 1863, have paid in the amount of revenue due on that date. That being so, it appears to me that the case comes within the plain provisions of s. 53, and that the plaintiff was a person who was an unrecorded co-partner in an estate, and who purchased in March, although the purchase relates back to January, the estate of which he was the co-partner. That being so, he took the estate subject to all its encumbrances existing at the time of sale, and did not acquire any rights in respect to under-tenants or royts, which were not possessed by the previous proprietor at the time of the sale in execution. Taking this view of the case, I think the judgment of the Court below must be set aside, and the plaintiff's suit dismissed with costs.

We understand this decision to be sufficient for the purposes of the present appeal. If the tenure of the defendants is such that the previous owner could have evicted them after notice, then, of course, it will be open to the now plaintiff to take any steps which his predecessor might have taken.

Appeal allowed.

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