

cited (only?) limit the discretion of the Court in saying what reason is good and sufficient, or what may be so far requisite to the ends of justice as to support an application for review. Upon an appeal, where an appeal lies, it may be open to the Court of Appeal to say that the Judge ought not to have admitted a review; but that is a very different thing from ruling that he has acted wholly without jurisdiction. In the first case, the Appellate Court reverses the order, because the Judge has erred in the mode in which he has exercised a judicial discretion; in the latter case, it quashes the order, because there was no discretion at all to be exercised.

Their Lordships, for these reasons, are of opinion that the order of the High Court which is under appeal cannot be supported; and they must humbly advise Her Majesty to allow this appeal, to reverse the order of the High Court, and in lieu thereof to order that the rule to show cause why the order of Mr. Craster should not be set aside be discharged, with the usual costs in the High Court.

The appellant, who has been obliged to come here, must, of course, have his costs of this appeal.

*Appeal allowed.*

Agent for the appellaut : Mr. *T. L. Wilson.*

Agent for the respondents : Mr. *Horace Earle.*

### FULL BENCH.

*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice Jackson, Mr Justice Macpherson, and Mr. Justice Markby.*

BHYRUB CHUNDER BUNDOPADHYA (PLAINTIFF) *v.* SOUDAMINI DABEE (DEFENDANT).\*

1876  
Aug. 14.

*Sale in Execution of Decree—Period from which Title of Purchaser dates—Confirmation of Sale—Liability of Purchaser for Government Revenue.*

The defendant became a purchaser at an execution-sale of a share of certain property, of which the plaintiff held another share partly as

\* Special Appeal, No. 2715 of 1874, against the decree of a Subordinate Judge of Zilla East Burdwan, dated the 28th July, 1874, modifying a decree of the Sudder Munsiff of that district, dated the 29th of October, 1873.

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zemindar and partly as putnidar: the sale took place in September, 1872, but the defendant did not obtain possession until confirmation of the sale in May, 1873. Between the date of the sale and the confirmation, a considerable sum became due for Government revenue on the whole property and to prevent its being sold, the plaintiff paid the whole of the revenue due. In a suit to recover the proportion due in respect of the share purchased by the defendant, *held*, that, on confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale; and, therefore, she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation.

THIS case was referred by Garth, C. J., and Birch, J., for the opinion of a Full Bench, in the following order of reference:—

GARTH, C.J.—The plaintiff and defendant in this suit became purchasers respectively of two different shares in the same property at an execution sale (1). The sale was completed on the 15th Assin, 1279, (30th September, 1872), but the defendant did not obtain possession until the 24th Bysack, 1280, (5th May, 1873). Between the date of the sale and the time when the sale was confirmed (and when the defendant obtained possession), a considerable sum became due, in respect of the whole property purchased, for Government revenue; and, in order to prevent proceedings being taken by the Government authorities to enforce payment of this sum, the plaintiff, who was the purchaser of by far the largest share of the property, paid the amount due to the Government authorities, and then brought a suit to recover from the defendant the proportion due in respect of her share.

The defendant's answer was that she did not become liable to pay any revenue to Government upon her share until after the confirmation of her purchase, and that no part of the revenue claimed accrued due after that time.

These facts being admitted, the question arises whether the defendant became liable to pay revenue in respect of her share from the date of her purchase, or from the date of confirmation of it.

(1) The defendant only was a purchaser at the execution-sale: the plaintiff held his share partly as zemindar and partly as putnidar.

Upon this point there are conflicting authorities in the High Court. The case of *Kalee Dass Neogee v. Hur Nath Roy Chowdry* (1) appears to have decided, that the title of an auction-purchaser under a decree relates back to the date of sale although the sale may not have been confirmed until long afterwards; the case of *Bepin Beharee Biswas v. Judoonath Hazrah* (2), on the other hand, appears to have decided, that the title of a purchaser under similar circumstances accrues only from the date of confirmation of the sale. The point, therefore, is referred to a Full Bench for their determination.

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Babu *Sham Lall Mitter* for the appellant.—The plaintiff having paid the whole of the Government revenue is entitled to bring a suit for contribution. If the revenue had not been paid, the sale would not have been confirmed. The certificate of sale being a valid transfer, the holder is entitled to rents and profits from the date of the sale (Act VIII of 1859, ss. 259 and 264: see Macpherson's Civil Procedure Code, 5th edition, p. 304), and there is a remedy to recover against the judgment-debtor. In the form of certificate given in Broughton's Civil Procedure Code, p. 799, there is not even a blank left for the insertion of the date of confirmation, nor is there any allusion to it made in the form of confirmation of sale in use on the Appellate Side of this Court. S. 259 states what is necessary to be set out in a sale certificate, and does not mention the date of confirmation. If the judgment-debtor were to pay Government revenue, the amount paid by him would be deducted from the debt due from him. If a sale takes place in execution of a decree in force and valid at the time of sale, and the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale or the title of the purchaser—*Chunderkant Surmah v. Bissessur Surmah Chuckerbutty* (3). The Court must refuse to go into facts behind a sale certificate—*Lalla Bissessur Dyal v. Doolar Chand Sahoo* (4). It is bound to give full effect to the terms of a sale certificate, and cannot limit the effect of that certificate by conclusions

(1) W. R., 1864, Gap No., 279.

(2) 21 W. R., 367.

(3) 7 W. R., 312.

(4) 22 W. R., 181.

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and inferences drawn from other documents—*Mookhya Hur-ruckraj Joshee v. Ram Lall Gomasta* (1).

Babu *Bykanto Nath Pal* for the respondent.—The purchaser of a tenure at a sale for arrears of rent is held liable for rents from the date on which the sale may be confirmed—*Beepin Behari Biswas v. Jadoonath Hazrah* (2). The purchaser is required to pay only 25 per cent of the purchase-money (Civil Procedure Code, s. 253), and his right to take possession does not accrue until after 30 days, within which time the sale is liable to be reversed. If the sale is not reversed, the judgment-debtor has the right of appeal. If the sale is not confirmed, the purchaser has not any right whatever to the property, and is entitled only in the discretion of the Court to interest on the money paid: he is not held liable to debts with respect to the property purchased, until he is entitled to rents and profits. The sale is of no effect until after the confirmation: and the purchaser is not entitled to receive any benefit until he has paid the purchase-money in full.

Babu *Sham Lall Mitter* in reply.

The following opinions were delivered by the Full Bench:—

GARTH, C.J. (KEMP, JACKSON, and MACPHERSON, J.J., concurring.)—The question which we propose to decide in this case is whether the plaintiff is entitled to recover from the defendant certain sums paid by the plaintiff for Government revenue due in respect of a share, now owned by the defendant, in a zemindari, the larger share of which belongs to the plaintiff.

The proceedings do not show very accurately what the precise position of the parties is; but the facts seem to be as follows. The plaintiff owns as zemindar and putnidar (or partly as zemindar and partly as putnidar) a 15 annas 3 gandas 3 cowries share of an estate, Lot Nimdaba, registered as No. 75 in the Collectorate of Burdwan; and Krishnaprosonno Mozumdar and another were the zemindars of the remaining small share, 16 gandas 1 cowrie. The total revenue payable to the

(1) 14 W. R., 435.

(2) 21 W. R., 367.

Collector in respect of the estate was Rs. 8,807 4 annas 11 gandas. Of this, Rs. 8,356 9 annas 11 gandas represented the plaintiff's share, and Rs. 450 11 annas was the share of Krishnaprosonno Mozumdar, &c. And the plaintiff states in the plaint that he was entrusted with the payment of the whole revenue as well what was due in respect of his own share of the zemindari and his own share of the putni, as what was due in respect of the share of Krishnaprosonno Mozumdar, &c. The share of Krishnaprosonno Mozumdar, &c., having been attached and sold in execution of the decree of a Civil Court, one-half of it was purchased by the defendant Soudamini. Certain instalments of Government revenue having fallen due between the date of the execution sale and the date on which Soudamini's purchase was confirmed by the order of Court, they were paid by the plaintiff, who, in truth, was obliged to pay them in order to save the whole estate from being sold by the Collector. The question is, whether, as the sale to Soudamini was eventually confirmed, she is not now liable to refund to the plaintiff the sums so paid by him.

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The defendant denies her liability in respect of any Government revenue which accrued due prior to the date of confirmation of her purchase.

In our opinion the sale having been confirmed, and the purchaser having obtained a certificate, the interest of the judgment-debtor must be held, for the purposes of this suit, to have ceased from the date of the sale and to have thus become vested in the purchaser. That being so, we think that the purchaser, the defendant Soudamini, must be deemed the person liable to pay the amount of Government revenue in question, and that, therefore, the plaintiff is entitled to recover from her the payments which he made on account of her share of the property amounting (after giving her credit for the Rs. 25 which she had paid) to Rs. 168-15½, with interest on that sum at the rate of 6 per cent. from the time or times when the payments were made.

The judgment of the lower Appellate Court will be altered accordingly, and the plaintiff, the appellant, will have the costs of this appeal.

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MARKBY, J.—I concur in thinking that, under the circumstances of this case, the appellant had a right to recover from the respondent the amount claimed in respect of the two payments of Government revenue made by the appellant for the January and March quarters of 1872.

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## APPELLATE CIVIL.

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*Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice Kemp, Mr. Justice Jackson, Mr. Justice Macpherson, and Mr. Justice Markby.*

1876  
Sept. 4.

RAJENDRONATH MOOKHOPADHYA (ONE OF THE DEFENDANTS) v.  
BASSIDER RUHMAN KHONDKHAR AND ANOTHER (PLAINTIFFS).\*

*Landlord and Tenant—Notice to quit—Suit for Ejectment—Procedure.*

A ryot whose tenancy can only be determined by a reasonable notice to quit, expiring at the end of the year, can claim to have a suit for ejectment brought against him by his landlord dismissed on the ground that he has received no such notice.

THIS case was referred to a Full Bench in the following order of reference (in which the facts sufficiently appear) by

MARKBY, J.—The facts of this case may be very shortly stated. The plaintiff was a cultivating ryot, not having (as far as appears) any right of occupancy and not holding for any specified term. In Jeyt, 1277, (13th May to 13th June, 1872), his landlord, without giving him any notice at all, put in a fresh tenant. In Pous, 1279, (14th December, 1872, to 12th January 1873), the plaintiff brought this suit to recover possession. The zemindar, who together with the in-coming tenant, defended the suit, alleged that the plaintiff had relinquished his tenure in 1276 (1869-1870). Both Courts have found that there was no relinquishment, and have given the plaintiff a decree.

In special appeal it is contended that the plaintiff had no title upon which he could recover possession. Of course, as against

\* Special Appeal, No. 3205 of 1874, against a decree of the Officiating Subordinate Judge of Zilla Nuddea, dated the 22nd of September, 1874, affirming a decree of the Munsif of Kuste, dated the 30th of May, 1873.