

GRISHCHUNDER CHUCKERBUTTY AND ANOTHER, GUARDIANS OF DWARKANATH CHUCKERBUTTY, A MINOR (DEFENDANTS) *v.* JIBANESWARI DEBIA, MOTHER AND GUARDIAN OF KAILAS CHUNDER CHUCKERBUTTY (PLAINTIFF).

P.C.*
1880
May 4.

AND

GRISHCHUNDER CHUCKERBUTTY, GUARDIAN OF DWARKANATH CHUCKERBUTTY, A MINOR (DEFENDANT) *v.* BISESWARI DEBIA, MOTHER AND GUARDIAN OF PROSUNNO KUMAR CHUCKERBUTTY (PLAINTIFF).

[On Appeal from the High Court, Bengal.]

Sale in Execution of the "right, title, and interest" of a Judgment-Debtor in a partly executed Decree—Possession of land attached under Reg. V of 1805, s. 26.—Right of Purchaser.

A decree of the year 1843 awarded to persons, afterwards represented by the respondents, the possession of a moiety of a taluk, which had been since 1837, and remained till 1866, under attachment by the Collector in virtue of an order made under Reg. V of 1812. The Court which granted the decree, intending to execute it, approved the proceedings of an Amin purporting to put the decree-holders into constructive possession of a certain number of mouzas of the taluk.

In 1850, the appellants, in execution of a decree for money obtained by them against the respondents, purchased at a sale, amongst other things, "their right, title, and interest" in the decree of 1843. *Held*, that possession of the mouza having been delivered, so far as it could be delivered, considering the attachment to which the taluk containing these mouzas was subject, the decree of 1843 had been so far executed; and that what was acquired by the appellants at the execution-sale was only the unexecuted portion of the decree of 1843.

APPEALS, on leave obtained, from decrees of the High Court of Bengal, dated 12th June 1876, affirming decrees of the Subordinate Judge of Mymensing, dated 4th January 1875, so far as they were adverse to the defendants, appellants. The suits were originally dismissed by the Court of first instance, on the ground of limitation (14th June 1873); but, on appeal to the High Court, having been remanded for trial, as being not barred by limitation, they were tried and decided in favor of the plaintiffs, against the appellants—decisions which were upheld in the High Court.

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

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The same question was raised by both appeals, *viz.*, whether the entire rights of the respondents, and of those whom they represented, under a decree dated 11th November 1843 of the Court of the Principal Sudder Amin of Mymensing, had been purchased in 1850 on behalf of the predecessors in estate of the appellants, or only such portion of that decree as then remained unexecuted; it being contended by the respondents that, at the date of the sale, the decree had been partly executed.

Mr. *Cowie*, Q. C., and Mr. *J. Graham*, Q. C., for the appellants.

The respondents did not appear.

The facts of the case are stated in the judgment of their Lordships, which was delivered by

SIR R. P. COLLIER.—This case was reduced during the argument to a point of law, which becomes intelligible upon the statement of a few facts.

Brojo Kishor and Ram Kishor were brothers, joint in estate, of whom Ram Kishor died sometime before 1835, leaving two sons, Ram Kumar and Nobo Kumar. In the year 1835 an estate, consisting of an 8-anna share in a taluk, called Newaz Ali, and belonging to one Abdul Samad, was bought in the name of Ram Kumar, but with the joint funds of the family. Brojo Kishor died in 1836, having, shortly before his death, separated from the other branch of the family. He left two widows, each of whom adopted a son, one adopted son being Ishan Chunder and the other Mohesh Chunder. Upon, or sometime after, the death of Brojo Kishor, Ram Kumar set up an exclusive title to the purchased estate; and the representatives of Brojo Kishor, who at that time were the adopted sons, in the year 1839, brought a suit against Ram Kumar and his brother Nobo Kumar, for the purpose of having their title declared and obtaining possession of Brojo Kishor's moiety of this property, and obtained a decree awarding to them that possession on the 11th November 1843. Both the plaintiffs in that suit afterwards died, Ishan Chunder being now represented by his widow Jibaneswari, the respondent in one of these appeals, and

Mobesh Chunder by his adoptive mother Biseswari, the respondent in the other appeal. After their death, and in or about 1848, the representatives of Ram Kishor obtained a decree against the two last-named widows, as the then representatives of Brojo Kishor, in respect of a money demand against Brojo Kishor. They proceeded to the execution of that decree. The usual notice and proclamation of sale were made, and on 16th July 1850 the appellants bought, in pursuance of the usual proclamation, among other things, the right, title, and interest of the judgment-debtors in the decree of the 11th November 1843. The question in the cause is, what passed by the sale of that decree?

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It is necessary to state that, in the year 1837, the whole taluk of Newaz Ali, which was subject to a number of disputed claims, was attached by an order of the Civil Court, and remained in the possession of an officer of the Collector until the year 1866. But, notwithstanding this, the Court, upon the representatives of Brojo Kishor obtaining their decree in November 1843, attempted to give the decree-holders, at all events, constructive possession of a certain number of the mouzas, part of their share of the purchased estate, and for that purpose deputed an Amin to ascertain what belonged to them. The Amin made a lengthened investigation, and, after hearing both parties, and going over the ground, he marked out by sticks and posts certain lands which, according to his view, the decree-holders were entitled to, and he gave them, or professed to give them, possession of those lands; and he also required the ryots to sign kabuliats with respect to these lands. These proceedings came before the Court, and were approved by the Court. It is undoubted, therefore, that the Court intended to deliver possession as far as it could, and believed that it had the right to deliver possession effectual for the execution of the decree to the decree-holders of a certain number of mouzas. The question is, whether the representatives of Ram Kishor, buying the decree on the 16th of July 1850, bought with it those mouzas with respect to which it had been executed in the manner described, or only so much of the property to which it relates with respect to which it remained unexecuted?

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The attachment continued until 1866, when it was discharged. Thereupon Jibaneswari brought her suit for the purpose of obtaining possession of her share of those mouzas of which, as she alleged, possession had been given in execution of the decree of the 11th November 1843. Biseswari also brought a suit for the purpose of obtaining her share of the same mouzas. These suits involve the same question, and the same judgment applies to both of them. The defendants alleged their right to the whole of that which had been bought of Abdul Samad. The first Court in India found in favor of the plaintiffs in the two suits with respect to the greater part of the property. That decision was affirmed by the High Court, upon the grounds on which it was given, the main ground of both decisions being that, in point of fact, possession was delivered of the mouzas in question before the sale of the 16th August 1850, as far as it could be delivered, considering the Government attachment to which the whole taluk was subject, and that the delivery of the possession, such as it was, was effectual to execute the decree.

Their Lordships have felt some difficulty about this case ; but, on the best consideration they are able to give it, they do not see their way to reversing the decision of the High Court. It has been contended, with a good deal of force, that no actual possession could have been given while the whole taluk was under attachment. At the same time, the Court appear to have undertaken to execute the decree, to give such possession as could be given, and to have adopted proceedings which they deemed proper for that purpose, and possession has been given in the manner described of the mouzas now in question. That being so, the question is, what was sold by the description of "the right and interest of the judgment-debtors in the decree?" Was it that of which possession had been given in the manner described, or was it only of that portion of the decree which remained to be executed? Their Lordships, on the whole, think it must be taken that what was put up for sale, what was intended and what was understood to be sold, must have been the unexecuted portion only of the decree. Under these circumstances, although the case is not unattended with difficulty, their Lordships will humbly advise Her Majesty that the deci-

sion of the High Court be affirmed. Inasmuch as the respondents have not appeared by counsel, there will be no costs of this appeal.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Watkins and Lattey.*

Solicitor for the respondents: Mr. *T. L. Wilson.*

APPELLATE CRIMINAL.

Before Mr. Justice White and Mr. Justice Field.

GOGUN CHUNDER GHOSE *v.* THE EMPRESS.*

Evidence, Admissibility of--Judgment in Civil Suit out of which Criminal Prosecution arises.

In suit by *A* against the obligors of a bond, the Court held, for the reasons stated in its judgment, that the signatures of the obligors were not genuine, and directed the prosecution of *A* on a charge of forgery. On the trial of *A* before a jury, this judgment of the Civil Court was put in evidence on behalf of the prosecution, and its contents commented on by the Sessions Judge in his charge to the jury.

Held, that this judgment had been illegally admitted.

Mr. *M. Ghose* and Baboo *Bykant Nath Dass* for the accused.

THE facts of this case sufficiently appear in the judgment of the Court (WHITE and FIELD, JJ.), which was delivered by

WHITE, J. — This was an appeal by the prisoner Gogun Chunder Ghose against a conviction under s. 471 of the Code and a sentence of five years' rigorous imprisonment.

The circumstances out of which the prosecution arose are these: The prisoner had brought a suit against Basheeram Mundle and his two brothers, Babooram Mundle and Dharani Dhur Mundle, for the recovery of 726 rupees, being the amount of principal and interest due upon a kistibandi, or bond, alleged to have been executed in favor of the prisoner by the three brothers.

* Criminal Appeal, No. 433 of 1880, against the order of W. H. Page, Esq., Officiating Additional Sessions Judge of the 24-Pargannas, dated the 10th June 1880.

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