

(1909) 04 AHC CK 0008
In the Allahabad High Court

Siraj-Ud-Din

APPELLANT

Vs

Musammat Mumtaz-Un-Nisa and Another

RESPONDENT

Date of Decision : 06-04-1909

Acts Referred:

Citation : 2 Ind. Cas. 81

Hon'ble Judges : Richards, J

Bench : Single Bench

Judgement

Richards, J.—This was a suit for arrears of rent. The plaintiffs who are mortgagees had made a lease to the defendant which was to continue up to the end of the year 1312 Fasli. It appears that there was a prior mortgage on the property, in favour of one Janki Prashad who sued on foot of his mortgage, obtained a decree which was duly made absolute and the property was add to an outsider, Ali Ahmad, on 24th March 1905. The sale was confirmed on 25 May 1905. The defence to the suit was that on the date of the sale, 24th March 1905, the title of the plaintiffs had come to an end, and that therefore they were not entitled to recover any rent after that date. Both sides in this Court (and apparently in the Courts below) have treated the case as turning entirely upon the question, when did the plaintiff's title come to an end? The plaintiffs contend (relying upon Section 316 of the CPC Act No. XIV of 1882) that their title did not come to an end until the sale was confirmed on 25th May 1905, The Court of first instance decided that; their title came to an end on 24th March 1905 and gave a decree on that basis. The lower appellate Court decided that the title came to an end on 25th May 1905 and gave a decree on that basis. The question for determination is which-construction of Section 316 is correct.

2. Section 316 is as follows:

When a sale of immovable property has become absolute in manner aforesaid the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale, and so far as regards the

parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before". In my opinion the true meaning of the section is that the legal title to the property is not complete until the sale is confirmed. But if the sale is subsequently confirmed the confirmation relates back and the purchaser becomes the owner of the property from the date of the original purchase. It seems to me that a contrary construction would lead to the greatest inconvenience and injustice. "If the putting up of the property to auction, knocking it down to the purchaser, and receiving the purchase money is not a sale until the proceeding is confirmed, it ought not to be called a sale. An illustration has been given of the absurdity of holding that there is no sale until confirmation. A property may consist of land with valuable houses built thereon together with valuable trees. The property is put up to sale. The would-be purchaser bids for the property on the basis that valuable houses exist and also that valuable trees are growing. Could it be said that the judgment-debtor or his creditors are entitled to the freeholds and to the materials of the houses if they could manage to remove them before the sale is confirmed? Again valuable zamindari property may be the subject-matter of a sale. The purchaser pays the purchase money into Court. But for some reason or other for which he is in no way responsible the sale is not confirmed for several months. Meanwhile the rents and profits of the zamindari property have been accruing due. Could it be said that the judgment-debtor is entitled to those rents and profits which have accrued pending the confirmation of sale, How is the purchaser to be compensated for his money which has been lying idle between the date of the deposit and confirmation of the sale? I am confirmed in the view I take by the ruling in *Dagdu v. Panchamsing Ganguram* 17 B. 375. In that case the property was purchased by the plaintiff on 27th February 1886. On 10th March 1886 the same property was put up to sale under another decree and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886 and the sale to the plaintiff on 21st July 1886. The plaintiff sued to recover possession of the property on the ground that the sale to him was the first in date. The defendant relied on Section 316. It was held that the plaintiff was entitled to succeed. This case was followed by a Judge of this Court in *Chiddo v. Piari Lal* 19 A. 188. The same view was taken by the Calcutta High Court in *Adhur Chunder Banerjee v. Aghore Nath Aroo* 2 C.W.N. 589. It is true that to some extent a contrary view was taken by a Bench of this Court in the case of *Amir Kazim v. Darbari Mal* 24 A. 475. That however was a case of mesne profits. None of the cases that I have referred to appear to have been cited by the learned Judges in that case. They are not dealt with in any way and no note of the cases appears in the record. One of the learned Judges, namely, Mr. Justice Burkitt, had previously decided the case of *Het Ram v. Baldeo* (1894) 24 A.W.N. 54. The learned Judge in that case did not actually hold that the title of the auction-purchaser related back to the sale, but he cites the decision of the Bombay High Court in *Dagdu v. Panchamsing Gangaram* 17 B. 375 with approval. In my opinion the decision of the Court of first instance was correct and ought to be restored. I accordingly

allow the appeal, set aside the decree of the lower appellate Court and restore that of the Court of first instance with costs.