

1863.
BHUKAN
BHA'IBAV
P.
BHA'JI PRA'G.

essential by Hindú law to the validity of a sale, and that the precedent relied on by the Courts below had been overruled by later decisions.

The appeal was argued before NEWTON and WARDEN, JJ.
Dádábhái Frámji for the appellant.

NEWTON, J., delivered the following judgment of the Court :—

The Court finds that the Courts below held Bhukan's deed of sale to be genuine, but considered it invalid under the decision in Special Appeal No. 3667, as it had not been followed by possession. The Court finds, however, that this decision has been overruled by the decisions in Special Appeals Nos. 52 and 87. The Court, concurring in these later decisions, holds that by Hindú law a sale of immoveable property is valid though not followed by possession : and as in this case the Sheriff's sale extended only to such right, title, and interest as Jorá might possess in the property in dispute, and this had already vested in Bhukan, Bháiji took nothing by his purchase from the Sheriff.

The Court, therefore, affirms Bhukan's right under his deed of sale, and, in reversing the Senior Assistant Judge's decree, throws out Bháiji's original claim with all costs.

Decree reversed.

Special Appeal No. 129 of 1863.

July 31.

BHA'ISHANKAR NARBHERA'M.....Appellant.
HARIVALLABH and othersRespondents.

Sheriff's Sale—Purchase in Name of Son—Suit brought in Son's Name—Act VIII. of 1859, Sec. 260.

A purchased at a Sheriff's sale in the name of his son the interest of a mortgagee in certain property, and before Act VIII. of 1859 came into operation instituted a suit in his own name to recover possession of the mortgaged property.

Held that the suit was rightly brought if the son's consent could be shown.

Query—What is the effect of Sec. 260 of Act VIII. of 1859 on suits of this character.

THE appellant, plaintiff below, brought this action to obtain possession of certain moveable and immoveable

property situated in the City of Súrat, which he claimed as assignee of a mortgage deed which had been purchased by him at a Sheriff's sale in the name of his son Mulshankar, who was a minor at the time.

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For the defendants it was contended that the suit should have been brought by the person whose name appeared as purchaser, and that the interest under the deed only was sold by auction, and not the mortgaged property.

The Principal Şadr Amín of Súrat, Khán Bahádur Mánikji Pestanji, rejected the claim, on the ground that, the interest under the mortgage deed in question having been purchased in the name of Mulshankar, Mulshankar's father (the plaintiff) had no right to bring the action.

On appeal against this decision, the Judge of Súrat, A. B. Warden, confirmed the Principal Şadr Amín's decision.

The plaintiff again appealed.

Dhirajlál Mathurádás for the appellant.

Dádábhdái Frámji for the respondents.

For the appellant it was contended that the case was ruled by the decision of the late Şadr Diváni Adálat in S. A. No. 103 of 1861,* where it was held that the mere circumstance of any conveyance being in any given individual's name does not constitute him the legal owner of the property conveyed, if the person contesting his title thereto can disprove it.

PER CURIAM (NEWTON and FORBES, JJ.) :—In accordance with the decision in Special Appeal No. 103 of 1861, the Court considers that the action is rightly brought by the special appellant, Bháishankar, if he can establish the consent of his son Mulshankar to the institution of the suit. We, therefore, reverse the decision of the Judge, and remand the case that the evidence of Mulshankar may be taken, and a new decree passed. Costs to follow the final decision.

As the suit was instituted before the passing of Act VIII. of 1859, we give no opinion as to the effect of Sec. 260 of that Act upon suits of this character.

Decree reversed.

* Harrington's Reports, Vol. IX., p. 18.