

1869  
Sept. 29.

*Special Appeal No. 37 of 1869.*

Krishnapa valad Santu ... .. Appellant.

Panchapa valad Gupapada, *et al.* ... .. Respondents.

*Sale of immoveable property by Court—Setting aside*

*sale—Suit to recover back purchase-money—Civ.*

*Proc. Code, Sec. 258.*

A purchaser at a Court's auction sale (not set aside under the provisions of the Code of Civil Procedure), who has been ejected from the property he has purchased, cannot recover back the purchase-money from the judgment-creditor, there being no warranty on the part of the latter that his judgment-debtor had any interest in the property sold.

*Dhondu v. Ramji* (4 Bom. H. C. Rep. A. C. J. 114)

commented on.

This was a Special Appeal from the decision of A. C. Watt Acting Senior Assistant Judge at Solapur, in Appeal Suit No. 110 of 1868, reversing the decree of Krishnarav Sadashiv, Sadar Amin of Solapur, in original Suit No. 8 of 1867, awarding the plaintiff's claim.

The facts sufficiently appear from the judgment.

The Special Appeal was argued in April 1869 before GIBBS and LLOYD, JJ.

*Shantaram Narayan* for the appellant.

*Bhariavanath Mangesh* for the respondents.

*Cur. Adv. vult.*

29th September—GIBBS, J.:—This is an action, by the purchaser at a Court's auction, to recover possession of a house, which he there purchased, or to receive back the purchase-money, he having been dispossessed of the property in a suit brought by one Baba, who established his title thereto. The Munsif awarded the purchase-money with interest, but the Senior Assistant Judge, on the authority of the case of *Dhondu v. Ramji (a)*, held that plaintiff could not recover the purchase-money, and rejected the claim. The defendants in the present suit were the plaintiffs and judgment-creditors in the suit under which the sale took place.

In the present case it is sought to re-open the question, disposed of in the case of *Dhondu v. Ramji* above quoted and the case of *Greesh Chunder Pottar v. Lookhoda*.

(a) 4 Bom. H. C. Rep. A. C. J. 114.

*Moyee Dabee (b)*, in which the Calcutta High Court, under circumstances similar to those of the present case, decreed the return of the purchase-money, as also some observations which fell from the learned Chief Justice and Sir Charles Sargent in the case of the *Bank of Hindustan v. Premchund Raichand (c)*, are brought forward in support of special appellant's case.

1869  
 Krishnappa  
 valad Santu  
 v.  
 Panchappa valad  
 Gurpadapa  
 et al.

Now, with reference to the Calcutta case quoted, I would simply observe that the opinion there recorded, which was followed in another case, *Brojendur Roy v. Jugurnath Roy, (d)*, does not appear to meet with the concurrence of some of the other judges, as in a decision reported in 2 Bengal Law Reports A. J. Civil 82 (e) it is mentioned by Jackson, J., that if it were necessary to decide the question, it would have to be referred to a Full Bench, the decision in the first volume of the Weekly Reporter not meeting with the approval of himself and his colleague.

The observations of the learned Chief Justice of this Court above alluded to are as follows:—"It is not now necessary to determine what is the proper course to be pursued by the purchaser in order to recover back the purchase-money. It may be that, under section 258 of the Civil Procedure Code, in a properly constituted suit, the Court ought to direct the money to be restored. I give no opinion upon that."—p. 93.

Sargent, J.'s observations, at page 96, are these: "A question must arise between the execution creditor and the purchaser. There must be an equity on the part of the latter to recover back his purchase-money, as the consideration for it has failed. This depends on the general principles of equity and it also appears that it is so under Sec. 258 of the Code of Civil Procedure. That section, in my opinion, being general in its terms, applies to all cases in which a sale is set aside, and not merely when it is set aside by reason of some irregularity in the proceedings; and so it would appear to have been decided by the High Court in Calcutta."

(b) 1 Calc. W. Rep. Civ. R. 55. (c) 5 Bom. H. C. Rep. O. C. J. 93, 96.  
 (d) 6 Calc. W. Rep. Civ. R. 147. (e) Rajib Lochan v. Bimalaniani Dasi

1869  
 Krishnaapa valad  
 Santu  
 Panchapa valad  
 Gurpadapa  
 et al.

When the case of *Dhondu v. Ramji* was argued before the then Mr. Justice Tucker and myself no mention was made of any decision of the Calcutta High Court, but I know find, in addition to the case above alluded to, a similar case reported in 6 Calc. Weekly Reporter 147 (e). In my judgment I depended a good deal on the English rulings that no warranty was given at a sberiff's sale, and I am still inclined to that opinion. But I prefer now to deal with the question entirely on the provisions of the Civil Procedure Code; and with all deference to the opinion expressed by Calcutta High Court, and to the opinion expressed by my learned brother Sargent, I consider that the provisions of Sec. 258 should not be interpreted in the very broad manner which has been suggested.

A Full Bench of this High Court in the case of *Reg. v. Krishna Parashram* (g) applied the principle laid down in *Marriage v. The Eastern Counties Railway Company* (h), viz., that the headings of the various divisions of sections may be referred to as a guide to determine the meaning of a section in the Criminal Procedure Code. On the same principle, I consider that the heading "Of sales in execution of decrees" shows that Secs. 248 to 272 are to be taken as the portion of the Code especially relating to that subject, and that the law relating to such sales is contained therein. I will review these sections: section 248 and 249 apply to all sales; they state by whom the sales are to be conducted, and what notification is to issued to be the public, as also the time of sale; sections 250 to 252 apply to sales of moveable property only; section 250 permits process for attachment and sale of such property to be issued simultaneously; section 251 provides for the mode of payment for such, and section 252 provides that no irregularity shall vitiate the sale of such property, but leaves any person so injured to recover damages by a separate suit.

Sections 253 to 260 refer to sales of immoveable property; and to these it is now necessary to pay very careful atten-

(f) *Brojendor Roy v. Jugurnath Roy*, (g) 5 Bom. H.C. Rep. Cr. Ca. 69.

(h) 9 Ho. Lo. Ca. 32.

tion. After stating the amount of deposit, and providing for the payment of the balance and the consequences of default, the 256th section provides for the confirmation of the sale by the Court. It contains the following proviso:—

“At any time within thirty days from the date of the sale, application may be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale; but no sale shall be set aside on the ground of such irregularity, unless the applicant shall prove to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.”

The 257th section provides an appeal against an order disallowing an objection.

Then follows the 258th section, which runs thus:—

“Whenever a sale of immovable property is set aside, the purchaser shall be entitled to receive back his purchase-money, with or without interest, in such manner as it may appear proper to the Court to direct in each instance.”

The 259th section provides for a certificate being granted to the purchaser on the sale being made absolute.

Now, it appears to me that the natural application of the 258th section is to the two preceding sections, and that after the words “whenever a sale of immovable property is set aside” we must understand the words “in the manner above mentioned,” *i. e.*, on the ground of any material irregularity in conducting or publishing the sale. I cannot see that any wider scope should be given them. But it is argued that the effect of a suit brought under section 246, if the plaintiff be successful, is really to set aside the Court’s sale, and therefore in such a case section 258 is applicable; and the purchaser, who has been deprived of the property which was put into his possession under the sale, should have the purchase-money returned with or without interest. Now these are nearly the facts of the present case. Krishnappa was the purchaser at a Court’s auction of the right, title, and interest of one Hanmanta in a house attached and sold as that person’s property. The sale was made absolute, the certificate granted, and Krishnappa was put in possession. On

1869

Krishnappa valad  
SantuPanchapa valad  
Gurpadapa  
*et al.*

1869  
 Krishnaapa valad  
 Santu  
 v.  
 Panchapa valad  
 Gurpadapa.  
 et al

Baba, instituted a suit against Krishnaapa, Hanmanta, and, the judgment-creditor at whose suit the sale took place, and established his claim to the house, from which Krishnaapa was then ejected. Now, can it be said that the decree against Krishnaapa sets aside the sale at which he purchased? Considering the various provisions of the Civil Procedure Code, and its distributions into parts and subjects, and its great fulness of directions, I cannot arrive at the conclusion that Baba's decree can be considered in the light of an order setting aside the sale. What did Krishnaapa purchase at the sale? The right, title, and interest of Hanmanta in the house, and nothing more. There was no warranty that Hanmanta had any right, title, and interest in it, and, therefore, he brought at his own risk; and if, in a subsequent suit, it was decided that Hanmant's right, title, and interest were *nil*, and that the entire property belonged to Baba, I cannot consider that that decree in any way affected the sale to Krishnaapa of such right, title, and interest, which still holds good, although what he bought now proves to be worthless. Had the Legislature intended the effect of section 258 to have the wide meaning which the Calcutta High Court has given, and my brother Sargent would give to it, I feel sure that the clear intimation of such intention would have been found in words in the Code. But such not being the case, I, for the reasons above recorded, adhere to the decision at which I arrived in *Dhondi v. Ramji* and I would therefore confirm the Lower Appellate Court's decree, with costs.

LLOYD, J.:—The sale not having been set aside under the provisions of the Civil Procedure Code, I fully concur with my brother Gibbs that Section 250 does not apply in this case; and as no authority has been pointed out which would, under the circumstances, justify our directing a refund of the purchase-money from the parties at whose instance the property was sold, the decree of the Senior Assistant Judge must be upheld.

*Decree confirmed.*

Note.—See the judgment in *Sowdamini Chowdian v. Krishna Kishon* (4 Beng. Law Rep. F B, 11), which is to the same effect as the above.  
 —Ed.