

[APPELLATE CIVIL.]

Before Mr. Justice Melvill and Mr. Justice Kenball.

1878.
March 5.

BASA'PPA' BIN MA'LA'PPA' AKI (ORIGINAL DEFENDANT NO. 2), APPELLANT, *v.* DUNDA'YA' BIN SHIVLINGA'YA' (ORIGINAL PLAINTIFF), RESPONDENT.*

Court's sale under a decree reversed in appeal before confirmation.

Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale, under a decree which was reversed in appeal subsequently to the sale, but before it had been confirmed.

Held that the Court, which had made the decree, ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court in completing the sale, was none the less without jurisdiction: and, being without jurisdiction, could confer no title.

If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected by the reversal of the decree.

A purchaser is bound to satisfy himself as to the jurisdiction of a Court to order a sale, and this obligation continues until the sale is completed. Before he applies to the Court to confirm the sale and grant him a certificate, the purchaser ought to ascertain that the decree, under which the sale was ordered, is still in existence.

THIS was a second appeal from the decision of C. H. Shaw, District Judge of Belgaum, affirming the decree of A. M. Cantem, First Class Subordinate Judge at the same place.

Ghanasham Nilkanth Nádikarni for the appellant.

Pándurang Balibhadra for the respondent.

MELVILL, J. :—This is a suit in ejectment, and, although the appellant, who was a defendant, may have no title, the plaintiff (the respondent) must recover on the strength of his own title. The plaintiff's title to the land is derived from the purchaser at a Court sale. The decree under which the sale took place, was reversed in appeal. The reversal took place subsequently to the sale, but before the order was made, confirming the sale. It is well established that, if a decree be reversed after a sale under it

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has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected by the reversal of the decree. But, in the present case, the decree was reversed while the sale was still incomplete; and from that moment the Court, which had made the decree, ceased to have jurisdiction to take any further steps to execute it. The Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it. But the act of the Court, in completing the sale, was none the less without jurisdiction; and, being without jurisdiction, could confer no title. We may refer on this point to the observations of the Judicial Committee in *Syud Tuffazal Hossein Khan v. Raghunath Prasád*.⁽¹⁾ In that case a Court had sold a mere expectancy or claim, which was not of such a nature as to be subject to attachment and sale. Their Lordships say: "The real objection to this sale, if sustainable in law, is not one of irregularity; it is one which, from its nature, as founded on a want of power in the Court, affects equally, if it be valid in law, the title of a purchaser under a strictly regular sale. Assuming the decision under appeal to be correct, the sale would be simply inoperative, though uncancelled." In the present case, the want of jurisdiction in the Court arose from a different cause; but the principle applicable appears to us to be the same. A purchaser is bound to satisfy himself as to the jurisdiction of a Court to order a sale (*Calvert v. Godfrey*⁽²⁾), and this obligation continues until the sale is completed. Before he applies to the Court to confirm the sale, and grant him a certificate, the purchaser ought to ascertain that the decree, under which the sale was ordered, is still in existence.

For these reasons, we think that the plaintiff took nothing by his purchase; and we, therefore, reverse the decrees of the Courts below, and disallow the claim. As, however, it has been found that the appellant has set up a false case, we direct that he bear his own costs throughout. The plaintiff (respondent) must also bear his own costs in all Courts.

Decree reversed.

⁽¹⁾ 7 Beng. L. R. (P. C.) 186.

⁽²⁾ 6 Bea. 97.