

1880
Nov. 23.
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APPEL-
LATE
CIVIL.
—
5 B. 198.

department, or, to adopt the language of s. 268 of Act X of 1877 (as amended by Act XII of 1879), as "the officer whose duty it is to disburse the salary." We, therefore, think that the application of certain persons who have recovered decrees in the Anklesvar Court to that Court to divide such moiety rateably between them and the Surat decree-holder, is not sustainable. That view is in accordance with the decision in *Jetha Madhavji v. Nujarali Abramji* (1), which was a civil reference from the Court of Small Causes at Ahmedabad. The portion of the reasoning of the learned Judge of that Court which this Court adopted, and on which it acted, is not stated in the report, but it was as follows:—"The words in s. 295 'more persons than one' must, I think, be taken to mean more decree-holders than one of the same Court, and do not include outsiders or decree-holders of other Courts, except, perhaps, those appearing on certificates under the provisions of chap. XIX (Act X of 1877 as amended by Act XII of 1879). This construction, I submit, is warranted by the words of s. 295, 'have, prior to the realization, applied to the Court by which such assets are held, for execution of decrees for money against the same judgment-debtor.' These words clearly indicate that those decree-holders only could share in the rateable distribution who have actually applied for execution of their decrees to the Court holding the assets." In the present case we, for the reason already above given, deem the Surat Court to be the Court holding the assets, and, prior to the realization thereof, there has not been any application to that Court by the Anklesvar decree-holders, who, therefore, are not entitled to share in the assets hitherto realized.

5 B. 202.

[202] APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice F. D. Melvill.*

In re KHAJA PATTHANJI, Applicant.* [7th September, 1880.]

Certificate of sale, application for—Limitation—Act XV of 1877, Sch. I, Art. 178—Civil Procedure Codes—Act VIII of 1859, ss. 256, 257, 259—Act X of 1877, s. 316—Purchaser's right to certificate of sale.

The applicant purchased certain land at a Court sale on 17th February 1876. The sale was confirmed on the 20th March of the same year. The purchaser did not apply for a certificate of sale until the 10th March 1880.

Held, that the application was barred by the Limitation Act, XV of 1877, sch. I, art. 178.

Held, also, that the purchaser's right to a certificate of sale accrued to him under Ss. 256, 257 and 259 of the Civil Procedure Code, Act VIII of 1859, on the 10th March 1876, when the sale was confirmed.

[Diss., 6 B. 586; 8 B. 377; Appl., 5 B. 206; R., 8 C. 367=10 C.L.R. 441.]

THIS case was referred for the opinion of the High Court by Rao Sahab Venkatrav Luxmaya, Second Class Subordinate Judge of Muddebihal, in the district of Kaladgi, under s. 617 of Act X of 1877. He stated the case as follows:—

"In original suit No. 214 of 1875 of this Court, one Andanepa obtained a money decree against one Balapa and another, and, in execution

* Civil Reference No. 11 of 1880.

(1) 4 B. 472.

thereof, caused Balapa's land to be sold in auction. At such auction sale, one Khaja Patthan purchased the land for Rs. 11, and he now makes an application for a certificate of sale. The auction sale was held on the 17th February 1876, and was confirmed on the 20th March 1876. The purchaser Khaja makes the application for certificate on the 10th March 1880, i.e., nearly four years after the confirmation of the sale by the Court. Section 316 of the Civil Procedure Code provides that 'when the sale of immoveable property has become absolute * * * * the Courts shall grant a certificate, &c.,' and therefore it is clear that to obtain such certificate the purchaser need not make an application. But in practice an application is always made by him in such cases. In the Indian Limitation Act, XV of 1877, no such application is specifically mentioned, but a general provision is made in art. 178, sch. II thereof, allowing three years for presenting all other applications not [203] specifically mentioned therein. An application for sale certificate, therefore, comes under this provision, and, consequently, it must be made within three years from the date of the confirmation of sale. Now, the question is—whether the present application, or, in other words, the purchaser's right to obtain a sale certificate, is barred, as he makes the application nearly four years after the confirmation of the sale.

" My own opinion is that the same is barred for the following reasons, namely, though it appears from s. 316 of the Civil Procedure Code, that the purchaser need make no application in such cases, yet it would not seem proper to grant him an important document of title on his mere appearance without any record of his prayer, particularly as he invariably appears before the Court for it a long time after the execution case is disposed of and sent to the District Court for record. The practice of making such applications is, I believe, followed in all Courts, and when they are so made, the limitation law must apply to them.

" There are at present three such cases, including the one under reference, pending in this Court, and I believe such cases frequently occur in the Subordinate Courts. Besides, this is the very question raised, but not decided, in the last sentence of the Honourable F. D. Melvill's opinion in *Basapa v. Marya* (1). I, therefore, respectfully request the Honourable the Chief Justice and Judges of Her Majesty's High Court to favour me with their decision thereon.

Ghanasham Nilkanth, as *amicus curiæ*, argued in support of the decision of the lower Court.—As the sale was confirmed on the 20th March 1876 the purchaser was entitled to a certificate on that day under s. 259 of the former Civil Procedure Code, Act VIII of 1859. Both that section and s. 316 of Act X of 1877 require the Court to grant a certificate to the purchaser after the confirmation of the sale. Neither of them, however, expressly says whether he is to have it on application or without it. The question then arises, whether the Court is bound to give it to him without an application, or only when [204] he applies for it. It is unreasonable to suppose that the Court should seek for him and furnish him with a certificate. He should apply to the Court for it. A certificate of sale is an important title-deed, and, as ruled in *Mulji Bechar v. Anupram Bechar* (2), the fact of a sale cannot be proved without the production of it. A purchaser has no right of action for possession of the property purchased by him at a Court sale before he obtains a proper

1880
SEP. 7.
—
APPEL-
LATE
—
CIVIL.
—
5 B. 202.

(1) 3 B. 493 (486).

(2) 7 B.H.C.R., A.C.J. 136.

1880
SEP. 7.
APPEL-
LATE
CIVIL.
5 B. 202.

certificate : *Lalbai Lakhmidas v. Navab Mir Kamaludin* (1); *Harkisandas Narayandas v. Bai Ichha* (2). His right to possession under ss. 263 and 264 of the Civil Procedure Code, Act VIII of 1859, and 318 and 319 of the new Code, X of 1877, does not accrue till a certificate is granted to him: *Basapa v. Marya* (3). A certificate is an instrument subject to the provisions of the Registration Act, and an unregistered certificate where its registration is compulsory is inadmissible in evidence and invalid, no other evidence being admissible to prove the sale. *Padu Malhari v. Rakhmai* (4): *Lalbai Lakhmidas v. Navab Mir Kamaludin* (1). Certificates of sale are also subject to the stamp laws. Thus it is evident that certificates of sale are important documents, and ought not to be granted unless applied for. The omission, in s. 259 of the old Civil Procedure Code and s. 316 of the new Code, of any words requiring such application, is no ground for supposing that it is not necessary. If, therefore, it is necessary, it must be made within a certain fixed period. The Limitation Act which applies to this case is Act XV of 1877. Art. 178 of sch. II of that Act requires all applications, not otherwise provided for, to be made within three years from the time when the right to apply accrues. As the application was not made until after the expiration of three years from the date of the confirmation of sale, it is barred, as held by the Subordinate Judge. If a person obtains a decree for possession or for sale of immoveable property, he cannot execute it after the lapse of three years. It is but reasonable that a purchaser who stands in a similar position should not be permitted to be free from the operation of the limitation law.

[205] *Pandurang Balibhadra, contra.*—In the Civil Procedure Code, whether old or new, whenever an application is necessary, the Code expressly says so. Neither s. 259 of Act VIII of 1859 nor s. 316 of Act X of 1877 requires the purchaser to make any such application, while they expressly provide that the Court shall grant a certificate to the purchaser on the confirmation of sale. The cases cited on the other side only show that the purchaser is not entitled to possession, unless he obtains a proper certificate, and that a Court sale cannot be proved otherwise than by the production of it. Under the Stamp Act, all that the purchaser has to do is to furnish the Court with a stamp of the proper value. It is not necessary that the stamp should be accompanied with an application for a certificate. In *Basapa v. Marya* (3) the application was made long after the expiration of three years from the date of the confirmation of sale, and yet a certificate was granted without objection.

The following is the judgment of the Court :—

JUDGMENT.

WESTROPP, C.J.—The auction sale of immoveable property took place on the 17th February 1876, and was confirmed on the 20th March 1876. The purchaser Khaja did not apply for a certificate of sale until the 10th March 1880, *i.e.*, not until four years *minus* ten days had elapsed since his right to such a certificate accrued to him under ss. 256, 257 and 259 of Act VIII of 1859. The question is, whether his application is barred by art. 178 of sch. I of the Limitation Act XV of 1877, which provides that “applications for which no period of limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure, s. 230,” must

(1) 12 B.H.C.R. 247.

(3) 3 B. 433.

(2) 4 B. 155.

(4) 10 B.H.C.R. 435.

be made within three years from the time "when the right to apply accrues." That article involves the further question, whether any application, by the purchaser, for the certificate of sale was necessary under s. 259 of Act VIII of 1859. That section does not say, in terms that the purchaser must apply, and does say that "after a sale of immoveable property shall have become absolute," *i.e.*, after it has been confirmed under s. 257, "the Court shall grant a certificate" to the purchaser. Act XVIII of 1869 rendered it [206] necessary that certificates of sale should be stamped; but the Governor-General in Council, by order of the 24th of October 1873—see *Bombay Government Gazette* of the 6th of November 1873—dispensed (as he lawfully might under s. 16 of the Act) with such duty, so that, at the date at which the plaintiff's right to a certificate of sale accrued, no stamp duty was necessary, and the purchaser need not present a stamped paper to the Court in order that the certificate of sale might be engrossed upon it. However, albeit that no stamped paper was then necessary, yet the invariable practice of our Civil Courts, so far as we know it, has been to wait for an application for a certificate of sale before they grant one to the purchaser. We think that this was a proper and the necessary practice, for the Court could not be reasonably expected and was not bound to seek out the purchaser in order to grant to him a certificate. Since the new stamp Act I of 1879 came into force, certificates of sale must be stamped as other ordinary conveyances are (*vide* sch. I, art. 16), and the purchaser, before he can get a certificate of sale, must present to the Court a properly stamped paper for it. And under s. 316 of the Civil Procedure Code, X of 1877, that certificate must bear the date of the confirmation of the sale.

We concur with the Subordinate Judge in thinking that the application in this case for the certificate of sale is barred by Act XV of 1877, sch. I, art. 178.

Note.—This case was followed in Civil Reference No. 1 of 1881 decided by Westropp, C, J. and Birdwood, J., on the 15th February 1881. See Printed Judgments for 1881, p. 39.

5 B. 206.

APPELLATE CIVIL.

*Before Sir Michael Roberts Westropp, Kt., Chief Justice, and
Mr. Justice Birdwood.*

TUKARAM (*Plaintiff*) v. SATVAJI KHANDUJI (*Defendant*).^{*}
[23rd March, 1881.]

*Application for certificate of sale—Limitation—Act XV of 1877, sch. II, art. 178—
Civil Procedure Code (Act VIII of 1859), s. 264—Possession without certificate.*

Where an application for a certificate of sale was made five years and a half after the confirmation of the sale.

Held that it was barred by art. 178 of sch. II of Act XV of 1877.

[207] It was not incumbent on the Court, under the Civil Procedure Code (VIII of 1859), s. 264, to put a purchaser into possession until he had his certificate of sale.

Quære, whether a purchaser who without a certificate of sale has been put into possession, could be lawfully ejected because he has not such a certificate.

[N.F., 8 B. 377; R., 6 B. 139 (142); 7 B. 254; 12 B. 589 (594); 8 C. 367 = 10 C.L.R. 441.]

^{*} Civil Reference No. 10 of 1881.

1880
SEP. 7
APPELLATE
LATE
CIVIL
5 B. 202.