

the place of the husband's residence, and consideration of the several sections of the Code leads us to the same conclusion.

On the whole looking to the general convenience and the policy of the Legislature we hold that a complaint under section 488 of the Code can only be lodged in the district in which the husband or the father has his residence.

We quash the proceedings of the Magistrate at Karmála leaving it to the complainant if so advised to make her complaint to the Court of a Presidency Magistrate at Bombay.

Proceedings quashed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, Mr. Justice Kemball and Mr. Justice West.

*In re RA'MKRISHNA.**

Practice—Stamp—Court sale—Certificate of sale—Purchase money.

September 11

Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase money in ascertaining the amount of the stamp duty leviable on the certificate of sale.

Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money.

It is the duty of the purchaser to provide the stamp.

THIS was a reference under section 49 of the Indian Stamp Act, No. I of 1879, by Ráo Sáheb V. V. Wagle, Subordinate Judge of Kumta, who stated the case thus:—

“Accompaniment A. is an application for a sale certificate, presented by one Rámkrishna, who purchased certain property for Rs. 2,100 at a sale in execution of a decree.

“The following charges on the property were mentioned in column 3 of the list of claims appended to the Proclamation of Sale:—

“1. A mortgage securing repayment with interest of Rs. 4,633-5-4.

* Civil Reference No. 22 of 1884.

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"2. A decree against the property for Rs. 2,593-8-1 and costs.

"The applicant seems to think the stamp duty payable on the sale-certificate is an *ad valorem* duty on the amount of the purchase money. He has paid Rs. 25 in currency notes, and he asks the Court to buy the necessary stamps.

"Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration money for the purchase—*Civil Reference from Board of Revenue*⁽¹⁾, and Referred Case No. 1 of 1881⁽²⁾. But in *Shá Nagindás v. Halalkore Nathwa*, I. L. R., 5 Bom., 470, it was held that where a certificate of sale expressly stated that the sale was made subject to the mortgage right of a third party, the principal sum due on the mortgage was to be deemed a part of the consideration. In the same case it was said that it would be a wholly erroneous practice to charge stamp duty on the amounts of claims against the property mentioned only in the Proclamation of Sale.

"The list appended to the Proclamation of Sale is prepared in accordance with the result of summary inquiries made by the Courts; and the claims included in it are only those for which a *prima facie* case of an honest and substantial right or interest is made out: *vide* clauses (7), (8), (9) of Rule II at page 168 of the Circulars; *vide* also sections 278 to 282 of the C. P. Code.

"There appears to be no difference between the effect of an inquiry under sections 278 to 282, and that of an inquiry under section 287 and the rules made thereunder. Both inquiries are 'Summary' inquiries, and the parties are entitled to bring regular suits to alter or set aside the orders passed. The intimation that 'the Court does not warrant the title of the judgment-debtor or any other claimant specified in the Proclamation to any lot set forth in it, or any interest therein or charge or claim thereon' applies as well to claims under section 278 as to claims stated in consequence of the notice appended to the copy of the prohibitory order or decree and schedule: *vide* clause (6) of Rule II at page 168 of the Circulars. Hence all

(1) I. L. R., 10 Cal., 92.

(2) I. L. R. 5 Mad., 18.

claims (except those which are rejected) mentioned in the Proclamation, are also mentioned in the sale-certificate. But this practice seems to be opposed to the views expressed in the abovementioned case of *Sha Nagindás*.

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“Under section 49 of the Stamp Act therefore I beg to submit the following questions for the decision of the High Court :—

“ (1). Are the claims mentioned in the list appended to the Proclamation of Sale to be set forth in the certificate of sale, as charges on the property sold ?

“ (2). If so, is the certificate chargeable with additional stamp duty ?

“ My humble opinion on the first point is in the affirmative and that on the second is in the negative.

“ I avail myself of this opportunity to refer one more question whether the necessary stamp should be purchased by the Subordinate Judge or by the purchaser ?

“ I think the stamp should be purchased by the Subordinate Judge, as he is the executant ; but the practice in this Court is different.”

The parties did not appear.

WEST, J.—According to the former decision claims on the property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase money.

Other claims should not be entered or computed.

The stamp should be provided by the purchaser.

Order accordingly.