

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

1885.
July 2.

NANDRA'M MOTIRA'M, PLAINTIFF, *v.* KA'CHA' BHA'U, DEFENDANT.*
SARUPCHAND MOTIRA'M, AUCTION-PURCHASER.

Practice—Grant of fresh certificate of sale to auction-purchaser while one already granted is in existence—Insufficient stamp.

A Court having once granted a certificate of sale to an auction-purchaser is under no obligation to give him another, in order that he may escape the penalty which he has incurred by reason of the certificate being insufficiently stamped.

THIS was a reference by Ráv Sáheb Káshináth B. Maráthé, Subordinate Judge of Yeola, under section 617 of the Civil Procedure Code (Act XIV of 1812).

He stated the reference as follows:—

“A certificate of sale was granted to one Sarupchand Motirám Márwádi. This certificate was presented by the grantee for registration. The Collector, as District Registrar, has ruled that the stamp is insufficient, and the insufficient stamp with penalty should be recovered from the grantee. The grantee has undoubtedly paid insufficient stamp, in the hope that he would be excused—on the strength of the Madras High Court decision in I. L. R., 7 Mad., 421, which is quoted in the certificate at the request of the purchaser—from paying a higher stamp. The Collector, however, does not think that that decision is binding, and requires the purchaser to pay up the insufficient stamp and penalty.

“The purchaser now moves this Court to grant him a new certificate on a proper stamp, and cancel the certificate already granted. The purchaser further requests that, if this Court should not grant his prayer for a new certificate, it should forward his petition to the High Court for their opinion. This Court's order on such a petition would, in my opinion, be final, and I refer the following question for the opinion of the Honourable Judges of the High Court:—

* Civil Reference, No 21 of 1885.

“ Can a Civil Court issue a new certificate of sale on a proper stamp, while the old one on insufficient stamp is available, on payment of penalty ordered by the Collector ? ”

There was no appearance for the parties.

SARGENT, C.J.—The Court, having given the purchaser a certificate of sale, is under no obligation to give him another for the sole purpose of evading the penalty, which he has incurred by not having presented in the first instance to the Court a paper properly stamped for it.

1885

NANDRÁM
MOTIRÁM
v.
KÁCHÁ BHÁU.

APPELLATE CIVIL.

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GOPA'RA'O GANESH, (ORIGINAL PLAINTIFF), APPELLANT, v. KISHOR
KA'LIDA'S, (ORIGINAL DEFENDANT), RESPONDENT.*

1885.

July 6.

*Landlord and tenant—Ejectment—Notice to quit—Finding of Appellate Court
without statement of reasons not conclusive.*

In answer to the plaintiff's suit in ejectment, the defendant denied the plaintiff's title, and asserted his own.

Held, that, assuming the defendant to be the plaintiff's tenant, yet inasmuch as the defendant denied the plaintiff's title it was not necessary for the plaintiff to prove service of notice to quit on the defendant.

The finding of an Appellate Court not accompanied by reasons is not conclusive.

THIS was a second appeal from the decision of F. Beaman, Assistant Judge of Ahmedabad, reversing the decree of Ráv Sáheb Lallubháí Pránvallabhdás Párek, Joint Subordinate Judge of Ahmedabad.

The plaintiff alleged that he had let to the defendant's father a piece of land which the defendant wrongfully refused to vacate; that the plaintiff had applied to the Mámlatdár to recover possession of it, but the Mámlatdár refused his application. The plaintiff, therefore, prayed for a decree directing the defendant to vacate the land, and deliver it into the possession of the plaintiff.

* Second Appeal, No. 655 of 1883.