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those which may be urged against filing an award, but it does not say that the award may be remitted, nor without express authority can a Court send back an award to private arbitrators over whose proceedings it has no control. Its only course, then, if a reasonable ground is shown, (or a conclusive cause according to *Dandekar* v. *Dandekars*[1]) is to refuse to file the award. This does no irreparable harm, since the party to be benefited can bring a suit on the award thus rejected. In the present case, however, there has been a simple excess in the award. The party who would benefit by this (Bhukan) expresses his readiness to renounce the benefit rather than be put to the expense of a suit, and it seems that complete justice will thus be done. When we are called on, then, by an exercise of our extraordinary jurisdiction, to set aside the Subordinate Judge's order for filing the award, we think it preferable to direct that the award stand good only for the remainder after its direction as to costs has been rejected, and that the decree be drawn in accordance with it, as it would be if it contained no direction as to costs.

The parties severally are to bear their own costs of this application. The costs, in the Subordinate Judge's Court, of Dagdusa are to be paid by Bhukan.

(1) I. L. R., 6 Bom., 663.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.

September 2.

BASWANTA'PA SHIDA'PA, MINOR, BY HIS MOTHER TAYAWA (ORIGINAL PLAINTIFF), APPELLANT, *v.* RA'NU AND MALKHA'NA (ORIGINAL DEFENDANTS), RESPONDENTS.*

Decree against the wrong person as representative of a deceased debtor—Sale in execution—Subsequent claim by proper representative—Estoppel—Quiescence.

One Shidápa Bápu died indebted to the second defendant Malkhána. On his death his widow Tayawa became his heir, as he left neither son nor brother surviving. In 1878 Malkhána brought a suit to enforce payment of the debt due by the deceased Shidápa Bápu, and he made Baslingáwa, the mother of Shidápa, defendant in the suit, omitting Tayawa altogether. On 30th August, 1878, Malkhána obtained an *ex-parte* decree, and on the 26th July, 1880, the house of Shidápa, then in the possession of Baslingáwa, was sold in execution, and the

*Second Appeal, No. 440 of 1883.

first defendant, Ránu, purchased it. On 6th September, 1880, the sale was confirmed, and on 26th November, 1880, Ránu was put into possession.

On the 10th of December, 1880, one Shidápa Basápa presented a petition on behalf, as he alleged, of the plaintiff Tayawa, the widow of Shidápa Bápu, to set aside the sale. He did not produce any authority from her, and his application was rejected on 14th June, 1881. On the 31st October, 1878, Tayawa adopted the plaintiff Baswantápa under an authority, as she alleged, of her deceased husband Shidápa Bápu.

In 1881 Tayawa filed the present suit on behalf of her adopted son Baswantápa to set aside the sale and to recover the house.

Held, that the plaintiff was entitled to have the sale set aside, and to recover possession of the house. The estate was vested in Tayawa as legal representative of her deceased husband. Had Tayawa wilfully put forward Baslingáwa as the representative of Shidápa Bápu so as to deceive and mislead Malkhána, then, no doubt, she might be held bound by the decree obtained by the latter against Baslingáwa. Her mere quiescence while Malkhána wilfully sued the wrong person could not affect her legal rights, or deprive her adopted son, the plaintiff Baswantápa, of his rights. He could not be bound by a suit and sale to which he was not a party either in person or by representation.

Held, also, that Tayawa was not bound to come forward to assert her ownership when the property was attached and sold under Malkhána's decree. The rule—that one who, knowing his own title, stands by and encourages a purchase of property as another's, will not be allowed to dispute the validity of the sale—implies a wilful misleading of the purchaser by some breach of duty on the owner's part. In this case there was nothing more than mere quiescence on the part of Tayawa.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum, confirming the decree of the Subordinate Judge at the same place.

One Shidápa Bápu died indebted to the second defendant Malkhána. On his death his widow Tayawa became his heir, as he left neither son nor brother surviving. In 1878, Malkhána brought a suit to enforce payment of the debt due by the deceased Shidápa Bápu, and he made Baslingáwa, the mother of Shidápa, defendant in the suit, omitting Tayawa altogether. On 30th August, 1878, Malkhána obtained an *ex-parte* decree, and on the 26th July, 1880, the house of Shidápa, then in the possession of Baslingáwa, was sold in execution, the first defendant Ránu becoming the purchaser. On the 6th September, 1880, the sale was confirmed, and on 26th November, 1880, Ránu was put into possession.

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BASWAMTÁPA SHIDÁPÁ v. RÁNU AND MALKHÁNA.

On the 10th of December, 1880, one Shidápa Basápa presented a petition on behalf, as he alleged, of the plaintiff Tayawa, the widow of Shidápa Bápu, to set aside the sale. He did not produce any authority from her, and his application was rejected on 14th June, 1881.

On the 31st October, 1878, Tayawa adopted the plaintiff Baswantápa under an authority, as she alleged, of her deceased husband Shidápa.

In 1881 the present suit was brought by Tayawa on behalf of her adopeted minor son against the first and second defendants, seeking to recover possession of the house purchased by the first defendant. Among other things the plaint set forth that at the time of his suit Malkhána had full knowledge that Jayawa was the widow of Shidápa Bápu, and, as such, was his legal representative; that, notwithstanding this knowledge, Malkhána instead of making Tayawa a party to the suit had made Balsingáwa, the mother of Shidápa Bápu, a party to that suit, and that shortly after the first defendant as execution purchaser was put into possession of the house. On 27th November, 1880, Shidápa Basápa, who held the house on behalf of Tayawa, applied to the Court for restoration thereof, but his application was rejected on 14th June, 1881.

The first defendant answered that the plaintiff had no right to sue him; that the facts that Tayawa was the widow of Shidápa Bápu, and that she had adopted the minor Baswantápa, were not known to him; that Tayawa never lived at the village where the house in question was situated; that Baslingáwa had held the house after the death of Shidápa Bápu, deceased; that Malkhána obtained a decree against Baslingáwa, and sold the house in execution; that he had purchased it at the Court sale, obtained a sale certificate, and was put into possession of the house, and that the claim of the plaintiff was time-barred, as it was preferred more than one year after the confirmation of the Court sale.

The second defendant contended that the first defendant having purchased the house at the Court sale, and become absolute owner thereof, the second defendant was not liable to be sued.

The Subordinate Judge was of opinion that as the plaintiff's application through Shidápa Basápa for restoration of the house was rejected on the 14th June, 1881, and the present suit was instituted on 19th September of the same year, the plaintiff's claim was not time-barred, and that as Baslingáwa held the possession of Shidápa Bápu's property after his death, and was not divided from her deceased son and the claim of the second defendant was against the deceased's estate, Malkhána had rightly made Baslingáwa a party to his suit, and obtained decree against her; and, lastly, that, as Baslingáwa held the house as Tayawa's agent, she ought to have informed Tayawa of the execution proceedings, and that the claim of the plaintiff was not maintainable.

The plaintiff appealed to the District Judge of Belgaum, who held her claim time-barred. He further held that, though Baslingáwa was not the legal representative of Shidápa Bápu, Tayawa ought not to have stood by and allowed Baslingáwa to be treated as legal representative of Shidápa; and, as she had taken no steps, the sale was good and unimpeachable by her.

The plaintiff appealed to the High Court.

Dáji Abáji Kháré for the appellant.—The present suit is a suit, not for setting aside a sale, but one for recovery of immoveable property, and the limitation provided for such a suit is twelve years. The case of *Venkapa* v. *Chenbasápa*[1] is on all fours with the present case: see *Nathu* v. *Badridás*[2]; *Bhica Mohan* v. *Sakarlal*[3]. The appellant was the legal representative of her deceased husband, and she ought to have been made a party to the former suit in order to render the sale valid as against her—*Natha* v. *Jamni*[4]. Again, the conduct of the appellant in allowing the sale to take place without obstruction does not estop the adopted son on whose behalf the appellant sues as his guardian—*Shiddhesvar* v. *Rámchandra Rav*[5]; *Uda Begam* v. *Imám-ud-din*[6].

(1) I. L. R., 4 Bom., 21.
(2) I. L. R., 5 All., 614.
(3) Printed Judgments for 1881, p. 68.
(4) 8 Bom. H. C. Rep., 37, A. C. J.
(5) I. L. R., 6, Bom., 463.
(6) I. L. R., 1 All., 82.

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Ghanashám Nilkanth Nádkarni for respondent.—The suit cannot be regarded as one for immoveable property. It is a suit for setting aside Court sale, and, as such, not having been brought within one year from the date of sale is time-barred—*Abul Munsoor* v. *Abdool Hamid*(1). The adoptive mother of the appellant had full knowledge of the execution proceedings, and she cannot turn upon the purchaser now—*Natha* v. *Jamni*(2). The mother of the appellant's husband having been in possession of her deceased son's property she was his representative—*Prosunno Chunder* v. *Kristo Chytunno Pal*(3). If the Court thought that the mother was not the proper representative of the deceased son, the Court had power to adjudge whether the debt, for which the decree was obtained, was real, and, as such, binding upon the proper representative—*Jathana Náik* v. *Venkatapa*(4). The conduct of the appellant's adoptive mother amounted to acquiescence on her part, and was a sufficient encouragement to the respondent at the time he bought the house in question—*Gamba Santáya* v. *Mahádev Anant*(5).

WEST, J.—In this case one Shidápa owed a sum, it is said, to Malkhána. Shidápa died, leaving a widow Tayawa and no son. Tayawa, therefore, was Shidápa's heir, he not having, so far as appears, any brother. The creditor Malkhána, desiring to enforce payment of the debt due by the deceased, ought obviously to have sued Tayawa, but instead of that he brought a suit against Shidâpa's mother Baslingáwa, and in execution of an *ex-parte* decree against her as representative of Shidápa sold, or affected to sell, the house in which she dwelt, which was, in fact, part of the estate then vested in Tayawa. An attempt was made to get the sale set aside by another Shidápa, who resided with Baslingáwa, but this failed. It does not appear that Shidápa acted as agent for Tayawa, and we agree with the District Judge that she could not be identified with Shidápa in his opposition to the attachment so as to be entitled to have limitation computed for her suit from the time of the decision against him. An

(1) I. L. R., 2 Cal., 98.
(2) 8 Bom. H. C. Rep. at p. 43, A. C. J.
(3) I. L. R., 4 Cal., 342.
(4) I. L. R., 5 Bom. at pp. 20 and 21.
(5) Printed Judgments for 1883, p. 353.

unauthorized act cannot afterwards be ratified so as to prejudice a third person who could not be legally affected in the first instance owing to the want of authority (Indian Contract Act, IX of 1872, sec. 200).

It has, however, been many times ruled that the person who after a summary decision against him in a complaint arising on his obstruction is limited to one year, as the time within which he must bring a suit to establish his right, yet has twelve years if without any obstruction to the attachment or sale he first claims in a suit as having being wrongfully dispossessed of the property sold in execution. This is the position now taken by the plaintiff Baswantápa. He was adopted by Tayawa between the decree and the sale of the house in question. His right dates back to the death of her husband, and there was not any intermediate obstruction to the attachment or sale on Tayawa's part by which Baswantápa could be bound. Had Shidápa acted for her in trying to get the sale set aside, the present suit would have been in time under the Law of Limitation, but she merely remained quiescent. It is urged, however, that this quiescence was in itself enough to bind Tayawa, and binding her bound her adopted son also, so that now the latter is estopped from disputing the regularity of the proceedings leading to the sale and the validity of the title acquired by the defendant Ránu as purchaser at the sale in execution. The case of *Nátha Hari* v. *Jamni*[1] is referred to in support of this contention; and if Tayawa had wilfully put forward Baslingáwa as the representative of Shidápa so as to deceive and mislead Malkhána, then, no doubt, she might be held bound by the decree obtained by the latter against Baslingáwa. But the District Judge finds that Malkhána was not ignorant of Tayawa's position; there is nothing to indicate that she took any step to deceive him; and her mere quiescence, while he wilfully sued the wrong person, could not deprive her of her legal rights—see *Balvantráv Ganesh alias Tátya Sáheb* v. *Anpurnábái*[2]. Much less could it deprive her adopted son Baswantápa of his rights[3]. He could not be bound by a

(1) 8 Bom. H. C. Rep., A. C. J., 37.

(2) Second Appeal, No. 621 of 1882, decided 17th June, 1884.

(3) West & Buhler, 1174 (3rd ed.)

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suit and sale, to which he was not a party, either in person or by representative—*Fatu* v. *Dhondi*[1]. The case of *Prosunno Chunder Bhuttáchárji* v. *Kristo Chytunno Pal*[2] rests on a supposed deceitful withholding of a will and a suit against the wrong person induced by the deceit. The case of *Jetha Náik* v. *Venktápa*[3] shows that a suit, however just in itself, brought against the wrong party, cannot be sustained against the right one, though it shows also that a mortgage erroneously sued on against A., is not so extinguished by the decree and consequent execution that it will not avail against B., the person really liable, but not represented in the previous suit. In the present case there was not a mortgage giving to Malkhána an interest in Shidapa's property; there was but a debt due to him; and when the suit against Baslingáwa is pronounced ineffectual as against Baswantápa, there is nothing left to fall back upon, except the personal obligation so far as this may have descended to Baswantápa, and may still be an available cause of action to the creditor.

Tayawa, however, it is urged, was bound to come forward when the property was attached and sold on Malkhána's decree. But the present Code of Civil Procedure, in giving to persons an opportunity to come forward and set up claims to property proposed to be sold in execution, does not say, nor do the rules made under section 287 of the Code say, that by not coming forward a true owner of the property submits to an extinction of his legal rights. It still behoves an intending purchaser, as when the case of *Nátha Hari* v. *Jamni*[4] was decided, to see that the person sued as a representative was really the representative of the debtor deceased, since by sale of the derived interest (which is no interest) of A., the real interest of B., the true representative, cannot in general be affected. In the case we have just referred to, Story (Equity Jurisprudence) is quoted (page 43)[5] to the effect that one who knowing his own title stands by and encourages a purchase of property as another's, will not be allowed to dispute the validity of the sale; but this implies a wilful mis-

(1) Printed Judgments for 1884, p. 182.
(2) I. L. R., 4 Cal., 842.
(3) I. L. R., 5 Bom., 19.
(4) 8 Bom. H. C. Rep., A. C. J., p. 37.
(5) See Sugd. V. & P., Ch. XXIII, Sec. 1; 2 Wh. & T. L. C. 25, 27 (3rd ed.)

leading of the purchaser by some breach of duty on the owner's part. The principle broadly stated by Story must, in practice, be taken with the qualifications stated in *Russel* v. *Watts*(1) and in *Wilmot* v. *Barber*(2). From these it appears that "a man is not to be deprived of his legal rights, unless he has acted in such a way as would make it fraudulent for him to set up these rights." There must be ignorance on the one side deluded by a misrepresentation in act or word on the other—*Rajcoomar* v. *McQueen*(3). Now in the present case there does not appear to have been anything more than quiescence on the part of Tayawa, unless Shidápa's application can be attributed to her. If it could be so attributed, then the alleged quiescence and its consequences would fail; but, excluding this, there was no deceit practised; no one was asked to buy by Tayawa; she did not represent that she had no interest in the property. She merely left Malkhána to sell Baslingáwa's so-called representative interest for what it might be worth, and did not volunteer any advice or assistance to intending purchasers, who could themselves have ascertained the truth by reasonable inquiry(4). Supposing Tayawa was aware of what was going on, she was not, as we have seen, bound to take any step(5); she might lawfully leave the persons concerned to their own counsels and devices. The illustration to section 115 of the Indian Evidence Act sets forth that one is bound who intentionally and falsely leads a purchaser to suppose he is taking a perfect title. There is an obligation to truth in speech and act, but no obligation to speak or act where no confidence is given or accepted, merely for the purpose of guarding or furthering the interests of [strangers proceeding wholly *in invitum*, and with an omission to inquire, which is equivalent to knowledge (6).

The sale must, therefore, be pronounced void as against Baswantápa, and the decrees of the Courts below being reversed, the house is awarded to him as sought in his plaint, with costs throughout.

Decrees reversed.

(1) L. R., 25 Ch. D., 571.
(2) L. R., 15 Ch. D., 96, 105.
(3) L. R., 8 I. A., 40.
(4) *Mangles* v. *Dixon*, 3 H. L., 739; *Harrison* v. *Guest*, 8 H. L., 481.
(5) Second Appeal 621 of 1882, decided on 17th June 1884.
(6) See *per* Lord Selborne in *Agra Bank* v. *Barry*, L. R., 7 Eng. & Ir. Ap., at p. 157.