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assuming that the extradition proceedings could in some way limit the jurisdiction of the Sessions Court, it is plain that there is nothing here on the face of those proceedings to warrant the conclusion that any such limitation has been in fact imposed. The mere circumstance that the offence of dacoity alone is mentioned when extradition is demanded does not necessarily lead to the conclusion that the extradition is allowed for the purpose of a trial only on that [375] charge, and on no other charge whatever. And in any event it could not exclude a trial and conviction on any charge which the facts disclosed in the extradition proceedings would suffice to sustain. On the whole, therefore, it appears to me that, whether, in law, the jurisdiction of our Courts can or cannot be restricted by the condition on which extradition is allowed, no such restriction has, in fact, been imposed in this particular case, and, therefore, it was open to the Court below, and consequently it was its duty, to have tried the accused in this case under the same rules as apply to ordinary trials under the Code of Criminal Procedure. And the Sessions Judge ought to have convicted the prisoners in this case of the minor offence which the facts proved in evidence showed the prisoners had committed.

Order of acquittal reversed.

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APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Telang.

DAGDU (*Original Defendant*), Appellant v. PANCHAMSING
 GANGARAM (*Original Plaintiff*), Respondent.*

[3rd July, 1892.]

Execution sale—Decree—Purchasers at successive execution sales—Title obtained by first purchaser—Certificate of sale obtained by second purchaser before certificate obtained by first purchaser—Priority—Civil Procedure Code (Act XIV of 1882), s. 316—What is the title which vests under the section—Limitation in application of provisions of section—Confirmation of sale—Certificate of sale.

On 27th February, 1886, the plaintiff purchased certain land at a Court sale held in execution of a decree. On the 10th March, 1886, the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July, 1886, and the sale to the plaintiff not until the 21st July, 1886. Certificates of sale were issued to both plaintiff and defendant on the same day, viz., on the 22nd September, 1886, and on the 14th February, 1887, the defendant was put in possession. In 1889, the plaintiff brought this suit to recover possession.

The defendant relied on s. 316 of the Civil Procedure Code (Act XIV of 1882). He contended that as under that section the title of a purchaser at a Court sale vests at the date of the confirmation of the sale to him, his (the defendant's) right was superior to that of the plaintiff, inasmuch as the sale to him was confirmed on the 3rd July, 1886, while the sale to the plaintiff was not confirmed until afterwards, viz., on the 21st July.

[375] Held that the plaintiff was entitled to recover. By his prior purchase he had acquired an equitable or inchoate title to the property which was subsequently perfected by the certificate of sale. Nothing therefore passed to the defendant under his second sale.

The words "the title to the property sold" in s. 316 of the Code of Civil Procedure (Act XIV of 1882) mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed

* Second Appeal No. 228 of 1891.

as destroying any lesser interest which arises by reason of general equitable principles.

Quere.—Whether the provision in s. 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them.

Per JARDINE, J.—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties.

[F., 2 C.W.N. 589 (591); *Appr.*, 19 A. 188 (190); R., 33 A. 45 (47)=7 A.L.J. 893=7 Ind. Cas. 409; 7 C.L.J. 1 (8); 11 C.W.N. 495 (496); 2 Ind. Cas. 81 (82); 9 P.R. 1903=36 P.L.R. 1903; 11 P.R. 1906=4 P.L.R. 1906; 21 T.L.R. 152 (155); D., 22 A. 168 (174); 26 C. 176 (179).]

SECOND appeal from the decision of Khan Bahadur N.N. Nanavati, First Class Subordinate Judge at Dhulia with appellate powers, in appeal No. 81 of 1889 of the District File.

The plaintiff, Panchamsing sued to recover possession of four fields (Survey Nos. 6, 21, 22 and 23) and for mesne profits for the years 1887 and 1888.

The fields in question belonged originally to three brothers—Supdu, Sampat, and Mahipat—jointly.

On 27th February 1886 the fields were sold to the plaintiff in execution of a decree against Supdu and his brothers.

On 10th March 1886 the same fields were put up to sale in execution of another decree against Supdu alone, and purchased by the defendant.

The sale to the defendant was confirmed on 3rd July 1886.

The sale to the plaintiff was not confirmed until the 21st July 1886.

The sale certificates were issued to both plaintiff and defendant on the same day, *i.e.*, 22nd September 1886.

The defendant's certificate of sale was registered on 16th October 1886 and the plaintiff's a month later, *viz.*, on 16th November 1886.

On 14th February 1887 the defendant was put in possession.

[377] The principal question at issue between the parties was—who was entitled to priority, plaintiff or defendant, with respect to the lands in suit?

The Court of first instance decided this issue in the defendant's favour, on the ground that his certificate of sale was registered prior to plaintiff's certificate, and also that he had obtained possession. The suit was, therefore, dismissed with costs.

On appeal the Subordinate Judge with appellate powers held, on the authority of *Prangour v. Himanta* (1), that the sale to the plaintiff, not having been set aside at the time of the second sale, was a good and effectual sale to pass the property, so that there was nothing left to pass to the defendant under the second sale.

He, therefore, reversed the decree of the first Court and awarded the plaintiff's claim.

Against this decision the defendant appealed to the High Court. *Mahadev V. Bhat*, for appellant.—This is a case between two competing purchasers at Court sales. Under s. 316 of the Code of Civil Procedure (Act XIV of 1882) the title to the property sold vests in the purchaser from the date of the certificate of sale, and not before, and the date of the certificate must be the date of the confirmation of sale. In this case the sale to the defendant was confirmed before the confirmation of the sale to the plaintiff; therefore, under the section the property

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became vested in him. How could it be divested by the subsequent confirmation of the sale to the plaintiff? The defendant's purchase was, moreover, accompanied with possession. The defendant has, therefore, a better title—*Prem Chand Pal v. Purnima Dasi* (1); *Nanjundepa v. Hemapa* (2); *Lachminarayan v. Indrabhan* (3).

Mahadev C. Apte, for respondent.—By the sale to the plaintiff on the 27th February, 1886, all the right, title, and interest of the judgment-debtor passed to the plaintiff. There was then nothing left to pass to the defendant by the subsequent sale on the 10th March, 1886. The sale to the plaintiff stands good until it is set aside. It gave an equitable or inchoate title to the [378] plaintiff as purchaser. And that title became absolute when the sale was confirmed, and he obtained the formal certificate of sale.

His title, which was inchoate before, was perfected by the issue of the sale certificate. Nothing therefore passed to the defendant under the second sale—*Yeshwant v. Govind* (4); *Prangour v. Himanta* (5). Section 316, cl. 2 of the Code of Civil Procedure does not apply to auction-purchasers. It refers to the parties to the suit and persons claiming through them, and not to strangers.

JUDGMENT.

TELANG, J.—The question raised in this case is one upon which, apparently, there has not been yet any authoritative decision in this Court. On 27th February 1886 the property in dispute was sold at an execution sale and knocked down to the plaintiff. On 10th March 1886 the property was sold again, also in execution of a decree, and knocked down to the defendant. The latter sale was confirmed on 3rd July 1886, and the former subsequently on 21st July 1886. Certificates of sale were issued both to the plaintiff and defendant on 22nd September 1886, and on 14th February 1887 the defendant was put in possession. On the findings of the Court below, it is quite clear that the sale to the defendant was a sale only of the share of Supdu, while the sale to the plaintiff was a sale of the shares of Supdu and all his brothers. The plaintiff therefore is, in any event, entitled to the relief he claims as regards the shares and interests of Supdu's brothers. And the question is simply, as regards the share of Supdu, whether, in the events which have happened, it now belongs to the plaintiff or the defendant.

It will conduce to a clear understanding of the case, I think, if we ascertain the respective rights of the parties at the various dates which have been above mentioned. On the 27th February 1886 the sale to the plaintiff took place. At that time the defendant had admittedly no right to the property—present, future, vested, or contingent. And, according to the decisions of our Courts, the plaintiff then by virtue of such sale obtained an equitable interest in the property, which has been sometimes described as "inchoate," sometimes as "contingent." In *Kanapa* [379] v. *Janardan* (6) Sir M. R. Westropp spoke of the purchaser in such a case obtaining, as from the date of the sale, "a contingent right to the land, *i.e.*, contingent on subsequent confirmation." In the case of *Rajah Hossein Buksh Khan v. Baboo Roy Dhunput Sing Bahadoor* (7), payments made by a purchaser before confirmation of sale were allowed to such purchaser on the sale being subsequently set aside, Sir R. Couch

(1) 15 C. 546.

(2) 9 B. 10.

(3) P. J. 1883, 254.

(4) 10 B. 453.

(5) 12 C. 597.

(6) 11 B. H. C. R. 193 (194).

(7) 18 W. R. 289 (290).

saying: "The plaintiff by his purchase at the auction sale had acquired an inchoate right to the property. If the sale had been confirmed, he would have become the absolute purchaser." These cases, it is true, were decided under the old Civil Procedure Code, but the doctrine laid down in them was not based on the provisions of that Code, but on general equitable principles (1).

The question, then, is whether there is anything in the provisions of the present Code (XIV of 1882) which should be held to prevent such equitable interests arising. The words of the Code, s. 316, at first sight certainly seem to bear some such signification. "The title to the property," that section says, "vests in the purchaser upon the confirmation and not before." But I am, on the whole, of opinion, that these words are not necessarily inconsistent with the equitable interest accruing from the sale. What is the meaning of "the title to the property"? That phrase, according to its ordinary meaning, must, I apprehend, be held to apply only to a full perfected title, not to that "contingent" or "inchoate" title which Sir M. R. Westropp and Sir R. Couch spoke of in the cases above cited. Such a perfected title, doubtless, does not vest in the purchaser before confirmation. But is a provision, which enacts that, to be necessarily construed as destroying any lesser interest which arises by reason of general equitable principles? I am not satisfied that that is the necessary result of putting its ordinary grammatical sense on the language used by the Legislature. And, if that is not necessarily the ordinary grammatical sense, I can see some very weighty reasons for holding that we should not attribute that sense to the words. Suppose, for instance, the delay in [380] obtaining confirmation of the first execution sale is due to a vexatious or fraudulent attempt on the part of the judgment-debtor to set aside the sale—an attempt perhaps even based on collusion between the judgment-debtor and another creditor. Such an attempt may, of course, result in protracted litigation, and while such litigation is pending, the other creditor of the same judgment-debtor may get the property sold and the sale confirmed. Is the first purchaser to lose the benefit of his purchase under such circumstances for no fault of his own, and possibly even by the fraud and collusion of the judgment-debtor and the subsequent execution-creditor? Unless the words of the Legislature reasonably construed, are incapable of bearing any other interpretation, I should be unwilling to sanction this. Again, if the later purchase prevails, either the previous purchaser loses his money most inequitably; or if he is allowed a refund of it on the ground of there having been a total failure of consideration—though it is difficult to see precisely how this is to be practically done—the first execution-creditor is put to an inequitable loss, for which he may, conceivably, be quite unable to reimburse himself. On the other hand, if it is held that the previous sale prevails, there is no injustice to the later purchaser, who avowedly is a speculative purchaser or at all events is not entitled to the privileges of a *bona fide* purchaser for valuable consideration (2). These considerations appear to me to lead to the conclusion that we ought not to adopt the construction contended for on behalf of the appellants, unless the words used by the Legislature cannot reasonably be made to yield any other meaning.

To come back, then, to the words of the section itself. I have already pointed out that the words "the title to the property shall not vest

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(1) Cf. also *Nanjundepa v. Hemapa*, 9 B. 10; and *Yeshwant v. Govind*, 10 B. 453.
(2) Compare *Sobhagchand v. Bhaikhand*, per Melvill, J., 6 B. 193 (207).

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before the certificate" are not necessarily inconsistent with the subsistence of an equitable interest short of the full perfected title in the purchaser even before the certificate issues. And the facts that the transaction which takes place at the time of the auction is called a sale, that a cancellation of it is called the setting aside of a sale, that a subsequent auction [381] after the failure of the first is called a re-sale—all these things show that in the contemplation of the legislature the transaction even before confirmation and issue of certificate is a sale—though a sale liable to be set aside. It is something more, therefore, in its legal aspect, than a mere contract for sale, and must be treated as lying outside the scope of those differences of opinion which were referred to by Sir M. R. Westropp in *Waman v. Dhondiba* (1), and, therefore, rendering it unnecessary to inquire with any minuteness whether any real interest in the property itself resulted from the transaction or not.

There is in the same section, however, another phrase which requires notice:—"So far as regards parties to the suit and those claiming through or under them." The High Court of Calcutta (Norris and Beverley, JJ.) (2) has construed that phrase; and that Court has held that, if the title "as regards the parties to the suit" does not vest till after a particular date, it cannot, as regards third parties, date from any earlier period. It is impossible not to feel the force of this view. On the other hand, however, it ought not to be forgotten, that on this construction the whole of the clause above set out becomes mere surplusage. If the "vesting" takes effect at the same time "as regards parties to the suit" and as regards third parties, there is no obvious object in expressly specifying the former. It may, doubtless, be said that there is an object in specifying it, because the vesting may possibly take effect later as regards third parties. But it is not easy to imagine the case for which such a provision would be needed. I am myself, therefore, rather inclined to think, that the whole of the clause relating to the time when the vesting is to take effect was put in to give legislative form to the law as already laid down by the Courts under the Act of 1859, and in giving it such a form, it was thought desirable to insert the parenthetical clause above referred to in view of the similar words which occur in s. 312, touching the confirmation of the sale, and which were most probably inserted merely *ex abundanti cautela*. If this is so, it [382] is not improbable that there was no intention on the part of the Legislature to disturb the equitable rights flowing from the completion of the auction sale, but only to regulate such matters as arose, for instance, in *Basapa v. Marya* (3) or *Harkisandas v. Bai Ichha* (4). I think it would not be contrary to the rules laid down in the case of *Bank of England v. Vagliano Brothers* (5) and it would be in accordance with one of the rules in *Heydon's case* (6) to look to the old law and the decisions under it, so far as is necessary to arrive at such an interpretation of s. 316.

On the whole, therefore, it appears to me that we cannot decide the present case in favour of the defendant, without holding that an execution sale by the Court, before it is confirmed, creates not only no title to the property, but no right *in re* whatever, not even any equitable interest in the property. Apart from the Civil Procedure Code, it would, I think, be impossible to hold this. And in the words of the Code I can find no adequate support for the view that the Legislature intended that such

(1) 4 B. 126.

(2) *Prem Chand Pal v. Purnima Dasi*, 15 C. 546.

(3) 3 B. 433.

(4) 4 B. 155.

(5) L. R. (1891), A. C. 107.

(6) 3 Rep. 7b; and compare *Pelton v. Harison*, L. R. (1891), 2 Q. B. 422; *Connor v. Kent*, *Ibid*, 545; and *In re Leon*, L. R. (1892), 1 Ch. 348.

equitable interests, which had been constantly given effect to by the Courts, as a matter of substantive law, should now cease to be recognized. I am therefore of opinion that the decree of the Court below is right, and should be affirmed with costs.

JARDINE, J.—I am of the same opinion and concur in the proposed decree. I agree with my learned colleague in the reasons he has given. I think the reference to the parties and persons claiming under them in the addition made to s. 316 in Act XII of 1879, re-enacted in the Code, Act XIV of 1882, would be surplusage if the Legislature had intended the addition to apply to third parties. The addition requires the certificate to bear the date of the confirmation of the sale; and s. 314 declares that no sale of immoveable property shall become absolute until it has been confirmed; the new words in s. 316 as to the date when "the title to the property sold shall vest" seem to me technical, and to point to the complete title arising on the [383] sale becoming absolute, such as might be requisite to enable the purchaser to bring a suit in ejectment, but distinguishable from the inchoate title which suffices for a suit of an equitable nature. The distinction is illustrated by Westropp, C.J., in *Krishnaji v. Ganesh* (1).

There are many reported cases in which the right in equity of a third party to bring suit on the imperfect title has been declared before 1879: I take the Full Bench case of *Bhyrub Chunder v. Soudamini Dabee* (2) to be one of them; and it is not to be supposed that the Legislature in 1879 and 1882 was not aware of the settled doctrine which was applied by the High Court up to the time when this addition to s. 316 was made, as appears from *Yeshwant v. Govind* (3) and *Prem Chand Pal v. Purnima Dasi* (4). With reference to the remarks of Norris, J., in that case I would observe that it appears difficult to hold that the words of the new part of s. 316, which omit mention of strangers to the suit, can be construed to include them by inference, as that construction would abolish rights protected by a firmly established application of equity. Had this been the intention of the Legislature, express words would have been used. With regard to Beverley, J.'s concluding remark in that same case, I would also observe that the reasoning in *Prangour v. Himanta* (5) commends itself to me as a correct interpretation of s. 316 as amended.

Decree confirmed.

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(1) 6 B. 139.
(4) 15 C. 546.

(2) 2 C. 141.
(5) 12 C. 597.

(3) 10 B. 453.