

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ram Chunder Bysack v. Dinonath Surma Sirkar, from the High Court of Judicature at Fort William in Bengal; delivered June 13th, 1879.

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

THIS is a suit which was commenced on the 8th January 1874 by the Plaintiff, who seeks to recover possession of a 12 annas share in certain mouzahs which he claims to be his property, and out of which he says he was wrongfully ousted.

It is necessary for him to make out his title, and the way in which he attempts to make it out is under a sale in execution of a decree of the 31st May 1843 of the Principal Sudder Ameen of Faridpore. The sale under the execution did not take place until the 1st of June 1863, when one Anund Lochun Nundi, the Defendant No. 3, became the ostensible purchaser of the property. The Plaintiff, however, says that Fakiruddin, alias Azimuddin, was the real purchaser, and that he, the Plaintiff, subsequently purchased the property from Fakiruddin.

Two objections are made to the title of Fakiruddin as the purchaser of the property. First, it is said that the Principal Sudder Ameen of Fureedpore, who issued the execution under which the sale took place, had no jurisdiction to issue it, inasmuch as the district of Dacca was divided between two Principal Sudder Ameen, and that the property, or a great portion of it, was situate, not within the jurisdiction of the Principal Sudder Ameen of Fureedpore, but

within that of the Principal Sudder Ameen of Dacca. The first objection therefore was that the execution was entirely void for want of jurisdiction on the part of the Judge who issued it. The next objection was that, assuming the execution to have been valid, the purchase under it by Fakiruddin was a fictitious purchase for the benefit of the judgment-debtor Gorib Hossein, who was the representative of the original debtor Mahomed Joki Chowdhry. The first Defendant claimed as a purchaser under a sale in execution against the said Gorib Hossein on the 7th June 1865, subsequent to the execution under which Fakiruddin purchased, and he the first Defendant had been put into possession under his purchase.

Their Lordships will in the first place deal with the question of fictitious purchase, because if the purchase was fictitious the Defendant Fakiruddin obtained no title under it and the property remained the property of Gorib Hossein, whether the Principal Sudder Ameen had jurisdiction or not. The Judge of the first Court, at page 198 of the Record, deals with the question of jurisdiction: The 4th issue which was raised in the case was whether the purchase by Fakiruddin was benamee for Gorib Hossein or not. The Judge of the first Court did not come to an express finding or declaration with reference to that issue. The whole of his argument however tends to show that in his judgment that issue ought to be found in favour of the first Defendant. He says: "The first sale, the Defendant argues, " was collusive and fictitious. His pleader " shows that Gorib Hossein was indebted to " some. In execution of a money decree, the " claim which was upwards of Rs. 2,000—the " valuable property which, according to Plainti- " ff's estimate of the value, is worth more than " Rs. 10,000—was sold for Rs. 500: but still the " decree-holder, who had a claim for upwards of

“ Rs. 2,000, did not purchase it, and allowed the
 “ servant of Defendant, who was a friend to
 “ Gorib Hossein, the judgment-debtor, to bid for
 “ it. Again, Defendant No. 2 purchased it for a
 “ nominal price of Rs. 500; but did not proceed
 “ to take possession of the properties till the same
 “ properties were advertised for sale in execution
 “ of another decree. These facts the Defendant
 “ takes as the evidence of collusion, and he
 “ pleads therefore that Gorib Hossein, in order
 “ to give colour, went on ostensibly to object
 “ to the confirmation of the sale, but his en-
 “ deavour was in reality to create a title in
 “ favour of Defendant No. 3 fictitiously, and
 “ himself to retain and enjoy possession of the
 “ property to the prejudice of his other just
 “ creditors. The first auction sale is dated
 “ 1st June 1863, the date of advertisement of
 “ the second sale is 31st March 1865, and the
 “ second sale took place on the 2nd June 1865;
 “ but the debtor, Gorib Hossein, continued to
 “ be in possession of the property, and continued
 “ to discharge the public revenue on account
 “ of the estate down to the second auction.
 “ The first auction purchaser, after a lapse of
 “ two years, and after the second sale, applied
 “ to the Principal Sudder Ameen of Faridpore
 “ for delivery of possession of the property.
 “ The date of delivery is Assar 1272 B.S., and
 “ the date of dispossession by the Defendant
 “ is Bhadro of the same year, that is, a month
 “ after the delivery. These circumstances go
 “ to a great extent to speak in favour of the
 “ Defendant’s argument. It is certain that the
 “ judgment-debtor was in possession down to
 “ the second sale, and the attempt of Defendant
 “ No. 2 (Plaintiff’s vendor) to take symbolical
 “ possession after the second sale does not
 “ sufficiently prove that he was in actual pos-
 “ session of the property. Under the circum-

“ stances I am clearly of opinion that the
“ Defendant No. 1, who by virtue of a legal
“ title entered into possession of the property,
“ is entitled to oppose any, or to dispute the
“ title of any who may come to take possession
“ from him. The question therefore comes,
“ whether the first auction sale was a valid
“ sale, and whether the first auction purchaser
“ acquired a valid title.” The High Court, in
dealing with that portion of the judgment, say,
at page 208: “ Now, as to the question of
“ benamee, it seems to us that there was no
“ evidence to rebut the ordinary presumption
“ in favour of the ostensible purchaser.” The
ostensible purchaser really was not Fakiruddin,
but Anund Lochun Nundi. He was the person
in whose name the property was purchased.
“ The delay which has been relied upon is only
“ a delay of about six or seven months, because
“ it appears that the purchaser was kept at bay
“ by the judgment-debtor, who disputed the
“ sale, appealed against the order rejecting his
“ application, and continued those proceedings
“ down to August 1864.” The High Court
treat those proceedings as real and bonâ
fide, whereas the Judge of the Lower Court
stated that the Defendant contended that they
were not bonâ fide for the purpose of getting rid
of the sale, but fictitious proceedings taken for
the purpose of giving strength to the case that
the purchase made by Fakiruddin had been
made for his own benefit, and not for the benefit
of the judgment-debtor. The High Court make
no remark with reference to the question
whether those proceedings were fictitious or not.
They then go on: “ It then appears that the
“ papers were sent down to the Principal
“ Sudder Ameen with a view to further pro-
“ ceedings in execution being taken on the
“ 24th September 1864, and the purchaser