

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bishun Chand Bachhaot v. Bijoy Singh Dudhuria, from the High Court of Judicature at Fort William in Bengal; delivered the 10th March 1911.

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ROBSON.

SIR ARTHUR WILSON.

[DELIVERED BY LORD ROBSON.]

This is an Appeal from a Decree of the Bengal High Court of Judicature which confirmed a Decree of the Subordinate Judge of Murshidabad.

The suit was brought in September 1902 by the Respondent Bijoy Singh against the Appellant for a declaration that the purchase by the Appellant of a house at an auction sale, held under the Order of the District Court of Murshidabad, in certain execution proceedings, was invalid on the ground that it was brought about by the fraud of the Appellant and the other Defendants Tara Chand, the Judgment creditor, and Chatrapat Singh, the Judgment debtor, in those proceedings.

The Respondent Bijoy Singh was a creditor of Chatrapat Singh and held a Decree for the amount of his debt, Rs. 10,000. He applied to the District Court of Murshidabad for execution against Chatrapat's properties and accordingly

in September 1900 the house in question was attached and ordered to be sold on the 15th January 1901. The debtor procured a postponement of the sale until the 21st March 1901 by a part payment of Rs. 4,000. In January and February 1901 suits were begun by the debtor's two sons against the Respondent, alleging that the house was family property; that they were entitled to shares therein according to the Mitakshara law; and asking for injunctions restraining the sale of their shares. The sale was accordingly stayed in February 1901, on terms that security for the whole amount of Bijoy Singh's debt should be furnished. This was done on the 8th March 1901, and the sale on behalf of the Respondent thus indefinitely stayed.

In the meantime proceedings were also being taken against Chatrapat Singh by the Defendant Tara Chand, who had obtained a decree in the Calcutta Small Causes Court for the amount of his debt, Rs. 1,800, as far back as September 1896. That decree was transmitted to the District Court of Murshidabad for execution, and on the 22nd February 1901 the house in question was duly attached, and the sale fixed for the 15th May 1901. On that day the Judgment debtor petitioned the Court to postpone the sale for seven days. On his promise that the debt should be paid in that time, Tara Chand consented, and this delay was granted by the Court. The promise was not kept, and the sale accordingly took place on the 22nd May 1901, when the Appellant Bishun Chand Bachhaot became the purchaser at the price of Rs. 12,000. That sum was paid by him, and has since been distributed among the general body of creditors. It is now alleged that the real purchaser was the Judgment debtor himself, and that the Appellant was only a "benamdar" or mere nominee.

The charges of fraud made by the Respondent in his Statement of Claim were of a sweeping character. It was alleged that Tara Chand's decree was false, and obtained by collusion with the Judgment debtor; that there was similar fraud in relation to the attachment and the sale proclamation; that the suits by the sons were really instituted by the Judgment debtor in order to obtain a stay of the Respondent's suit, and so enable a sham sale to be effected in the collusive suit of Tara Chand; that the sale fixed for the 15th May 1901 was then adjourned with the fraudulent consent of Tara Chand because it was known that effective bidders would be present; that on the 22nd May the Judgment debtor's pleader, one Harendra, fraudulently told the Respondent's agent that the sale was again to be adjourned, and thus prevented him from attending, and that only dependants and followers of the Judgment debtor were present at the sale. The charges against Tara Chand in relation to his debt and decree were conclusively disproved. There can be no doubt that Tara Chand's decree, which was of long standing, was genuine, and that he sought and obtained execution under it in perfect good faith. Both the Subordinate Judge and the High Court have found in the Appellant's favour on this very important part of the case.

The learned Subordinate Judge has also found that the purchase money for the house was found by the Appellant himself and not, (as the Respondent alleges), by the Judgment debtor. The High Court do not dissent from this view, so that on the evidence it cannot be said that the Appellant was a mere "benamdar." Further, it was found that the Respondent's allegations of fraudulent non-service of process of attachment and sale were not correct.

These findings materially attenuate the general case of fraud set by the Respondent and, in what

remains of the case, their Lordships are unable to see any sufficient or substantial evidence of fraud on the part of the Appellant.

The genuineness of Tara Chand's debt and decree being now admitted, it becomes necessary to scrutinise carefully the charges brought against him in relation to the execution. His consent to the postponement of the sale for seven days on the debtor's promise of payment was not necessarily fraudulent. No doubt it fitted in well with the specific charges of fraud originally brought against him but, when those charges are eliminated from the case, there is nothing to show that this particular act may not have been quite innocent. The Respondent, however, can make no case unless it be treated as a step in the alleged conspiracy. Nor can much importance be attached to the fact that Tara Chand's pleader had intimate business connections with the Judgment debtor's pleader, Harendra. The fact is that Tara Chand's agent, Basanta, desired to retain Harendra in the proceedings, but Harendra, being already retained for the Judgment debtor, recommended his friend Ram Krishna, who thereupon acted for Tara Chand.

The Appellant is a money lender and a man of substance. When cross-examined as to his means he stated his income tax and offered to produce the receipts, so the suggestion that he was merely an impecunious nominee was not sustained.

He said he had heard of the proposed sale at the house of his pleader, Baikant Babu, who had also acted occasionally for Chatrapat. Baikant told him the property would be sold cheap, owing to the litigation of the sons which, he thought, would come to nothing in the end--an opinion which proved correct. The Appellant thereupon instructed him to arrange for a representative to attend the sale on his behalf and to

bid up to Rs. 10,000 or Rs. 12,000. He forthwith paid Rs. 3,000 to Baikant to meet the deposit that might be required and afterwards sent, out of his own funds, the balance of Rs. 9,000. Other bidders competed for the property. They are said, perhaps truly, to have been friends or associates of the Judgment debtor, but it is not correct to say they were "followers and dependants;" nor is there anything in the evidence or the circumstances to establish the suggestion that they were acting in collusion with the Appellant.

The Respondent says he was willing to give Rs. 60,000 for the house, but was prevented from attending by Harendra telling his agent on the day of the sale that he was instructed to apply for another postponement. Harendra was called by the Respondent, and would only say that he had no recollection of this; but, assuming that he said it, there is nothing to show that the Appellant should be held responsible for any misrepresentation by Harendra.

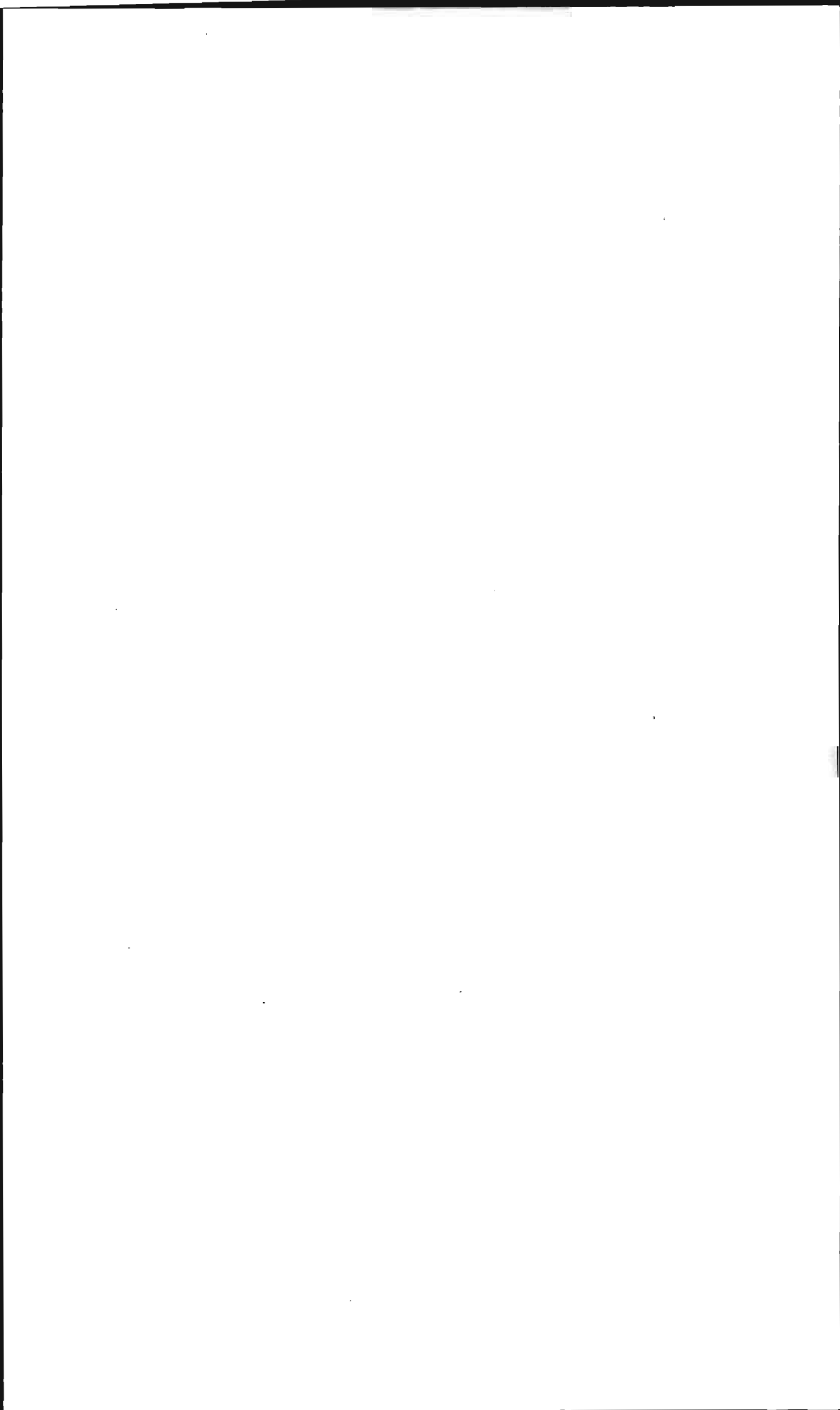
On the 20th June 1901 the Respondent preferred a claim under Section 311 of the Civil Procedure Code, in the District Court of Murshidabad, praying that the sale might be set aside, but his petition was dismissed, and the sale duly confirmed after evidence had been heard on both sides in relation to the points raised by the Respondent.

Litigation also arose after the sale between the Appellant and the sons of the Judgment debtor, who set up against him their claim to shares in the house under the Mitakshara law. That claim was dismissed and the Appellant obtained possession in January 1902. It is said that he has made no use of the property and still holds it for the benefit of the Judgment debtor, but this suit was commenced in September 1902 so that the Appellant has not been able to deal

effectively with what was probably a speculative purchase.

Their Lordships are of opinion that the allegations of fraud and conspiracy made against the Appellant have not been brought home to him and that, under all the circumstances, there is no sufficient ground for setting aside a sale, confirmed by the Court after prompt local inquiry, and for inflicting on the Appellant a forfeiture of the considerable purchase money paid by him out of his own funds.

Their Lordships will therefore humbly advise His Majesty that the Decrees of the High Court and of the Court of the Subordinate Judge ought to be reversed and this Appeal allowed, with costs here and in the Courts below.



In the Privy Council.

BISHUN CHAND BACHHAOT

v.

BIJOY SINGH DUDHURIA.

LONDON:

PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1911.