

(1878) 04 CAL CK 0022

Calcutta High Court

Case No: None

Harasatoollah and
Others

APPELLANT

Vs

Brojonath Ghose

RESPONDENT

Date of Decision: April 1, 1878

Acts Referred:

- Civil Procedure Code, 1877 - Section 318, 319
- Limitation Act, 1963 - Article 165(II)

Citation: (1878) ILR (Cal) 730

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

The Subordinate Judge seems to have correctly explained the present state of the law. If the purchaser at a sale in execution of a decree be resisted or obstructed when being put in possession by the Court, as provided for by Section 318 or Section 319 of the CPC of 1877,^[1] the Court can now act only u/s 334 or Section 335.

2. Section 318 provides for the giving of what is usually termed khas possession to an execution-purchaser, and the Court is empowered to "order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same." If resistance or obstruction is made by the judgment-debtor or any one on his behalf, the provisions of chapter xix of the Code relating to resistance or obstruction to a decree-holder are applicable to Section 334. If, on the other hand, the property sold was not in the khas possession of the judgment-debtor, but is in the occupancy of a tenant or other person entitled to occupy the same, possession by publication of his title is given to the execution-purchaser. And Section 334 provides for a summary enquiry on-

"resistance or obstruction caused by any person other than the judgment-debtor not in possession of the property sold, but claiming a right thereto as proprietor, mortgagee, lessee, or under any other title," if such resistance or obstruction be made the subject of complaint by the purchaser.

3. No provision is, however, now made if the obstruction or resistance to the possession of an auction-purchaser is caused by a third party, a stranger, claiming to be in actual possession on a title altogether independent of the judgment-debtor.

4. Section 331 provides for such a case, but only when possession is being given to a decree-holder in execution of a decree; and this does not apply to an execution-purchaser.

5. Section 269 of the Code of 1859 provided for this case, and we do not understand why it has been omitted from the present Code of 1877, and this omission is the more remarkable because the law of limitation, passed almost simultaneously with the present Code, in Schedule II, Article 165,^[2] seems to contemplate a summary enquiry by the Courts on the application by a person dispossessed of Immovable property and disputing the right of the purchaser at a sale in execution of a decree to be put in possession, since it provides a term within which suit or application by such a person for redress should be made.

6. In such a state of the law it seems obviously unfair for the Courts, which cannot now summarily determine the relative rights of the parties, to insist on putting an auction-purchaser into possession in spite of the resistance or obstruction of a third party having no connection with the judgment-debtor; and, therefore, it seems to us that, ordinarily, officers should be directed to abstain from any act of dispossession in such a case, leaving the execution-purchaser to his remedy by suit.

[1]

Section 318: When the property sold is in the occupancy of the judgment-debtor, or of some person claiming on his behalf, or of some person claiming created by the judgment-debtor subsequently to the sale, and a certificate of sale of such property, and a certificate of sale thereof has been granted u/s 316, the Court shall, on application by the purchaser, order delivery to the purchaser or any person whom he may appoint to receive delivery on his behalf of the property, and, if need be, by removing any person who refuses to vacate the property.

Section 319: When the property sold is in the occupancy of a tenant or of some person claiming on his behalf, and a certificate of sale of such property, and a certificate of sale thereof has been granted u/s 316, the Court shall order delivery to the purchaser or any person whom he may appoint to receive delivery on his behalf of the property, and, if need be, by removing any person who refuses to vacate the property.

customary, at some convenient place, that the interest of the judgment-debtor be transferred to the purchaser.

[2]

Schedule II, Article 165:

Under the Code of Civil Procedure, by a person dispossessed of Immovable property, and disputing the right of the decree holder or purchaser at a sale in execution of a decree to be put into possession. Thirty days. The date of dispossession.
