

1918
 RAJJAB
 ALI
 v.
 EMPEROR.

We would, therefore, direct that a copy of this judgment, as well as a copy of the judgment in Appeal No. 679 of 1917, be forwarded to the Local Government with a recommendation that the sentence of rigorous imprisonment passed on Rajjab Ali be reduced to the period he has already undergone.

E. H. M

CIVIL RULE.

Before Mookerjee and Beachcroft JJ.

1917
 Aug. 13.

NILKANTA RAI

v.

GOSTO BEHARI CHATTERJEE.*

Rateable Distribution—Civil Procedure Code (Act V of 1909) ss. 63, 73, application under—Sale by Munsif—Application to Subordinate Judge for attachment of sale-proceeds and rateable distribution.

Where in consequence of proceedings taken by a creditor, the Munsif sold the judgment debtor's properties and where another creditor applied to the Subordinate Judge after the said sale, to attach the sale-proceeds deposited in the Munsif's Court and to distribute the same rateably, and the latter refused the application :

Held, that in the events which had happened neither s. 63, nor s. 73 of the Civil Procedure Code applied.

Held, also, that the Subordinate Judge could not direct the Munsif to transmit the proceeds to his Court, but should move the District Judge to have the proceeds transferred. If this procedure were adopted, full effect would be given to the intention of the Legislature. The Subordinate Judge would in essence adopt the sale held by the Munsif and the sale proceeds would then be rateably distributed in accordance with the provisions of the Code.

Bykant Nath Shaha v. Rajendro Narain Rai (1), *Patel Naranji Morarji v. Haridas Navalram* (2) referred to.

* Civil Rule No. 502 of 1917, against the order of Kali Prosanna Sen, Subordinate Judge of Burdwan, dated June 9, 1917.

(1) (1885) I. L. R. 12 Calc. 333, 338. (2) (1893) I. L. R. 18 Bom. 458.

RULE obtained by Nilkanta Rai, the petitioner.

The facts are shortly these: On the 17th March 1916, the petitioner above-named obtained a money-decree against his judgment-debtor in the Court of the Subordinate Judge. Thereafter at the instance of the said petitioner, a writ of attachment was issued and served, whereupon a claimant appeared but his objection was overruled. The claimant next proceeded to sue for the cancellation of the order and obtained an injunction restraining the petitioner from proceeding with the execution of his decree, till the suit had been decided. Thereupon the Subordinate Judge stayed the sale and proceeded to dismiss the execution case. The latter was discontinued not by reason of default on the part of the decree-holder, but at the instance of an unsuccessful claimant who instituted a suit to contest the validity of the order in the claim case. Meanwhile proceedings were taken by the opposite party, another creditor of the same judgment-debtor, for realisation of his dues. The sale at his instance was fixed for the 20th April 1917. On the application of the petitioner the Subordinate Judge wrote a letter to the Munsif for the stay of the sale. The Munsif received the letter after the sale had taken place. Thereupon the petitioner applied to the Subordinate Judge to attach the sale proceeds deposited in the Munsif's Court and to distribute them rateably. On the 9th June 1917, the Subordinate Judge dismissed this application. From this order the petitioner moved the High Court and obtained the present Rule.

1917
 NILKANTA
 RAI
 v.
 GOSTO
 BEHARI
 CHATTERJEE.

Dr. Dwarkanath Mitra and Babu Rishindra Nath Sarkar, for the petitioner.

Babu Ram Charan Mitra and Babu Jyotish Chandra Sarkar, for the opposite party

1917

NILKANTA
RAI
v.
GOSTO
BEHARI
CHATTERJEE.

position thus is that in the events which have happened, neither section 63 nor section 73 applies.

The question next requires consideration, whether in the actual circumstances of the case, it is still possible for the Court to give relief to the petitioner. The Legislature undoubtedly contemplated that, where, as here, the same property has been attached in execution of two decrees, one passed by a Court of superior grade and the other by a Court of inferior grade, the sale should be held by the Court of superior grade. Here, however, the Court of lower grade has actually held the sale in ignorance of the fact that proceedings in execution had already been taken in the Court of higher grade, and that the property brought to sale was subject to a legally subsisting attachment effected in that Court.

But the true intention of the Legislature may still be carried out in substance, if the course pointed out in *Bykant Nath Shaha v. Rajendro Narain Rai* (1), is adopted. There, the same property was sold in execution successively by a Munsif and by a Subordinate Judge, and the question arose as to the validity of the title acquired by the subsequent purchaser. The Court observed that the Subordinate Judge, instead of holding a second sale, should rather have accepted the sale held by the Munsif, and have required a transfer of the deposit in his Court of the assets realised, so that they might be rateably distributed amongst all the decree-holders. The same view was adopted in *Patel Naranji Morarji v. Haridas Navalram* (2), where Sir Charles Sargent C. J. observed in similar circumstances that the petitioner might have applied to the District Judge to transfer the proceeds realized by the sale held by the second class Subordinate Judge to the Court of the first class Subordinate

(1) (1885) I. L. R. 12 Cal. 333, 338. (2) (1893) I. L. R. 18 Bom. 458.

Judge. If we compare the observations in the two cases just mentioned, it becomes obvious that Sir Charles Sargent pointed out the correct procedure to be followed in cases of this character, namely, the Subordinate Judge is not to direct the Munsif to transmit the proceeds to his Court, but should move the District Judge to have the proceeds so transferred. If this procedure is adopted, full effect is given to the intention of the Legislature. The Subordinate Judge in essence adopts the sale held by the Munsif as if it were a sale held by himself and the sale-proceeds are then rateably distributed in accordance with the provisions of the Code. We feel no doubt that the Court has inherent power to adopt the procedure we have described, to effectuate the ends of justice, and that this course should have been followed in the present case.

1917
 NILKANTA
 • RAI
 v.
 GOSTO
 BEHARI
 CHATTERJEE.

The result is that this Rule is made absolute, and the order of the Subordinate Judge set aside. We direct that the sale-proceeds be transferred from the Court of the Munsif to the Court of the Subordinate Judge, to be rateably distributed by him amongst the decree-holders who have qualified themselves under section 73 of the Civil Procedure Code, including the present petitioner. We make no order as to the costs of this Rule.

L. R.

Rule absolute.