

CIVIL REVISION.

Before Jack and Khundkar JJ.

MADHUSOODAN SHAHA

v.

RAMPRASAD CHIMANLAL.*

Execution proceedings—Auction-purchaser under money decree, if representative of judgment-debtor in another suit—Jurisdiction—Revision—High Court—Code of Civil Procedure (Act V of 1908), ss. 47, 60, 63 (2), 115, 151; O. XXI, rr. 58, 64.

Per JACK J. (KHUNDKAR J. concurring). The auction-purchaser in execution of a money decree is not a representative of the judgment-debtor in another suit within the meaning of section 47 of the Code of Civil Procedure, the property having been attached in execution of the decree in that suit previous to his decree.

Mahadeo Lal v. Darsan Gope (1) followed.

Srinivasachariar v. Apparoo Reddy (2) and *Veyindramuthu Pillai v. Maya Nadan* (3) not followed.

Per KHUNDKAR J. The learned Subordinate Judge had no jurisdiction to exempt the property from sale on the auction-purchaser's application and, accordingly, his refusal to do so is not capable of revision by the High Court.

Giris Chandra Gangopadhyay v. Sri Krishna De Nag (4) is no authority to the contrary.

Hukum Chand Boid v. Kamalanand Singh (5) distinguished.

CIVIL RULE under section 115 of the Civil Procedure Code obtained by the applicant.

The facts of the case and the arguments in the Rule appear sufficiently in the judgments.

Abinashchandra Ghosh for the petitioner.

Roopendrakumar Mitra, Assistant Government Pleader, and *Bijanbihari Mitra* for the opposite party.

Cur. adv. vult.

*Civil Revision, No. 1568 of 1933, against the order of Heeralal Mukherji, First Subordinate Judge of 24-Parganâs, dated Nov. 4, 1933.

(1) (1911) 15 C. W. N. 542.

(3) (1919) I. L. R. 43 Mad. 107.

(2) [1924] A. I. R. (Mad.), 889;

(4) (1923) 38 C. L. J. 266.

84 Ind. Cas. 265.

(5) (1905) I. L. R. 33 Calc. 927.

JACK J. On the 21st of September, 1932, the petitioner purchased 1 *bighâ* 4 *cottâs* of land, on which were tin sheds and a godown, in *mouzâ* Panjagram. The purchase was made at an auction sale in execution of a rent decree against the opposite party No. 2 and his co-sharers. The sale was subsequently confirmed; the petitioner obtained possession through court and has since been in possession of the property.

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Opposite party No. 1 had also got a decree against opposite party No. 2 and in execution of his decree had attached, on the 12th of June, 1931, a four annas share of the same property, and, in execution of his decree, this share of the property was sold on the 18th of June, 1932; an application was made to set aside this sale and it was set aside on the 29th of July, 1933. Thereafter proceedings were taken for re-sale and the 23rd October, 1933, was fixed for the sale. On that date, the petitioner applied to the learned Subordinate Judge for exemption of the property from sale on the ground that the judgment-debtor had no saleable interest, the property having already been purchased by him on the 21st of September, 1932. His petition was, however, rejected by the learned Subordinate Judge without going into the merits of the application, on the ground that there was no provision in the Code of Civil Procedure empowering the court to entertain such an application.

It is against this order that the petitioner has come up to this Court in Revision.

In coming to this decision, the learned judge was following the ruling in *Mahadeo Lal v. Darsan Gope* (1), in which it was held that neither under Order XXI, rule 58, nor under section 47 of the Civil Procedure Code could the petitioner apply to prevent the sale of his property. Now Order XXI, rule 58 has obviously no application, as it refers to objections to attachment. The question, on which this case

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depends, is whether the auction-purchaser in execution of a money decree is a representative of the judgment-debtor in another case, the property having been attached in execution of the decree in that case previous to his decree.

Under section 63 of the Civil Procedure Code, the court, which shall determine any claim, where properties are under attachment in execution of more decrees than one, is the court of the highest grade or where the courts are of the same grade the court under whose decree the property was first attached. But by the proviso in clause (2) nothing in the section shall be deemed to invalidate any proceeding taken by a court executing any one of such decrees. Therefore, in the present case, the sale in execution of the decree in the Second Munsif's court is valid. That being the case, the auction-purchaser became the owner of the property before the sale in execution of opposite party No. 1. The auction-purchaser is, therefore, not affected by the second sale, as he was not a party in the suit and the only way, in which opposite party No. 1 can attack him, is by showing that his purchase was a collusive and fraudulent transaction. The court below decided, following the decision in *Mahadeo Lal v. Darsan Gope* (1), that the petitioner was not a representative of the judgment-debtor so as to enable him to apply under section 47 for a declaration that the property, he had purchased, was not liable to sale in execution of the other decree. This decision appears to be correct, for the authorities seem to show that, though a wide meaning is to be attached to the term "representative" in section 47 of the Code of Civil Procedure, the auction-purchaser cannot be regarded as a representative of the judgment-debtor unless his interest is affected by the decree. In the present case, the interest of the petitioner, judgment-debtor, does not appear to be affected by the decree and, therefore, he is not entitled to maintain his application under section 47 of the Code of Civil

Procedure. He is in possession of the property: it will be for the opposite party No. 1 to establish his claim to the property as against the petitioner by separate proceedings.

Reference has been made to the case of *Srinivasa-chariar v. Appavoo Reddy* (1), where it appears to have been held in a similar case that a purchaser in execution of a decree by an inferior court can bring to the notice of the superior court the fact of his purchase as a representative of the judgment-debtor for stopping the sale in execution of a decree of the superior court. The learned judges dissented from the decision in the case of *Mahadeo Lal v. Darsan Gope* (2). In that case it was held that a purchaser was certainly a representative of the judgment-debtor, even though he was a court auction-purchaser and as such representative he was entitled under section 47 of the Code of Civil Procedure to apply to the Subordinate Judge to stop the sale of the property on the ground that the title to it had passed to him. The learned judges referred to the Full Bench Case of *Veyindramuthu Pillai v. Maya Nadan* (3) in support of the decision. In that Full Bench case it was held by Mr. Justice Oldfield that an auction-purchaser is a representative of the judgment-debtor for the purpose of an enquiry relating to a subsequent execution of a distinct decree against the judgment-debtor. In the same case, however, it was held by the officiating Chief Justice that—

Whether the auction purchaser * * * is to be regarded as the representative of the judgment-debtor or the decree-holder depends upon the nature of the questions raised and who the contesting party is.

The other learned Judge, Mr. Justice Seshagiri Ayyar, held that—

If the points for decision in an application before the executing court relate to the rival rights of the decree-holder and of the judgment-debtor and also relate to execution, discharge or satisfaction of the decree, it should be dealt with in execution and not by separate suit.

(1) [1924] A. I. R. (Mad.) 889 ;
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(3) (1919) I. L. R. 43 Mad. 107,
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Applying these principles to the present case, it is clear that the present application is not maintainable under section 47 of the Code of Civil Procedure. It was suggested for the petitioner that this is a case, in which the inherent powers of the court should be exercised in favour of the petitioner, inasmuch as, under Order XXI, rule 64, the property was not liable to sale, as it no longer belonged to the judgment-debtor. However, we do not think that the circumstances of the present case call for the exercise of our powers under section 151 of the Civil Procedure Code.

The Rule must, accordingly, be discharged. We make no order as to costs.

KHUNDKAR J. I agree. On behalf of the petitioner, an argument was advanced that the sale on the 21st September, 1932, at which the petitioner purchased the property and which was subsequently confirmed, effectively divested opposite party No. 2 of his entire interest in the property, so that it was no longer available under Order XXI, rule 64, which requires not only that the property in question should be under attachment but also that it should be liable to sale. In the present case, it is argued that the property was not liable to sale, inasmuch as it did not satisfy the language of section 60, which clearly specifies as liable to sale only such property as belongs to the judgment-debtor or over which the judgment-debtor has a disposing power. According to the petitioner, he is further fortified in his claim to relief by the provisions of section 63(2) and reliance is placed on the case of *Giris Chandra Gangopadhyay v. Sri Krishna De Nag* (1). This reasoning, as I apprehend it, is that to permit the sale to opposite party No. 1 to be confirmed would have the effect of invalidating a proceeding already taken by a court executing one of two decrees, *viz.*, the earlier sale of the 21st September, 1932, in which the petitioner himself

(1) (1923) 38 C. L. J. 266.

purchased the property. On these grounds, it was contended that the learned Subordinate Judge had power, under section 151, to stop the subsequent sale, and that his refusal to do so, in the circumstances of this case, amounted to a failure to exercise jurisdiction, which this Court, acting under section 115, should correct by prohibiting confirmation of that sale. Reference was made to the case of *Hukum Chand Boid v. Kamalanand Singh* (1), in support of the proposition, that the learned Subordinate Judge had power under section 151 to stay his hand in the matter of the sale to opposite party No. 1, a step which, in the circumstances of the case, was called for in the interests of justice. The observations contained in that judgment can, however, have no application to the special facts of this case, inasmuch as the concrete question, which arises directly for determination here has been concluded by the decision in *Mahadeo Lal v. Darsan Gope* (2). Adopting the view taken in that case, I am satisfied that in the proceedings before him, the learned Subordinate Judge had no jurisdiction to exempt the property from sale on the petitioner's application, and that, accordingly, his refusal to do so is not capable of revision. In my judgment, the case of *Giris Chandra Gangopadhyay v. Sri Krishna De Nag* (3) is no authority to the contrary, since in that case the question arose in a suit in which the plaintiff's title was denied by the defendants and not, as in the present case, on the objection of an auction-purchaser in an execution proceeding commenced by another decree-holder. The validity of the sale, in which the petitioner purchased the property, has been challenged in the course of the argument addressed to us on behalf of the opposite party No. 1. The attachment obtained by the latter was of an earlier date, and our attention has been invited to certain features of the execution proceedings in support of the suggestion

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that the sale to the petitioner was a collusive transaction. It is manifest, therefore, that at the present moment the real question at issue between the parties is whether the petitioner's title can prevail over that of the opposite party No. 1. As the petitioner is now in possession, this question, should, in my judgment, be left to be determined in such proceedings as may be suitably taken by the opposite party No. 1 to establish his rights against the petitioner.

Rule discharged.

G. S.