

APPELLATE CIVIL.

Before Mr. Justice Cunningham and Mr. Justice Maclean.

IN THE MATTER OF THE PETITION OF RAM COOMAR DEY.

1883,
February 7.

RAM COOMAR DEY *v.* SHUSHEE BHOOSHUN GHOSE AND ANOTHER.*

Sale in execution of decree—Civil Procedure Code (Act XIV of 1882), s. 313.

Section 313 of the Civil Procedure Code only applies to cases in which the judgment-debtor has no saleable interest in the property sold. It does not apply to cases where the judgment-debtor has no saleable interest in a portion only of the property.

THE facts of this case and the question raised in argument are stated in the following judgment of the lower Court: "The auction-purchaser applies for the setting aside of the sale, on the ground that the judgment-debtor really owned an eight annas share of the property sold, and the sale professes to be of sixteen annas. The question is whether under s. 313 of the Civil Procedure Code the sale is liable to be set aside on that ground.

"I think the provisions of the section are clear, and under them a sale can be annulled only where the judgment-debtor had no saleable interest in the property sold. Here that is not the case. I am referred to s. 287, and the High Court rules governing the settlement of the sale proclamation; these are undoubtedly authorities, and in the light of which the regularity of the publication of the sale proclamation should be determined.

"But regularity of a proclamation, or no regularity, does not in any way concern the purchaser, and it does not lie within his capability to raise a question of irregularity as vitiating the sale.

"I am told that in regard to the eight annas, in which judgment-debtor has no right, it might be designated as property in which no saleable interest belonged to him within the meaning of the

* Appeal from Original Order (No. 366 of 1882) against the order of Baboo Bulloram Mullick, Second Subordinate Judge of the 24-Pergunnahs, dated the 23rd September 1882.

Statute, but it should be borne in mind that the property was not sold in halves, and the purchaser has no right to draw an imaginary line of separation between them. The sale will be confirmed, and the auction-purchaser's application should be disallowed with costs."

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 GHOSH.

The purchaser appealed to the High Court.

Baboo *Amarendro Nath Chatterjee* for the appellant.

Baboo *Rajendro Nath Bose* for the respondents.

The judgment of the Court (CUNNINGHAM and MACLEAN, JJ.) was delivered by

CUNNINGHAM, J.—We think that the construction put by the Court below upon s. 313 of the Code of Civil Procedure was correct, and that the case of *Naharmul Marwari v. Sadut Ali* (1), does not bind us, because in that case the learned Judges considered that a state of things had come about in which the judgment-debtor had no saleable interest. In the present instance it is admitted that he has a saleable interest to the extent of eight annas. That being so we think we cannot hold that the case falls within the scope of s. 313. The appeal must, therefore, be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Wilson and Mr. Justice Field.

LUCKY CHURN CHOWDHRY (PLAINTIFF) v. BUDURRUNNISSA
 AND OTHERS (DEFENDANTS).*

1882
 August 15.

Appeal—Dismissal of Suit—Summons not served—Civil Procedure Code (Act X of 1877), ss. 97, 588.

An order under s. 97 of the Civil Procedure Code dismissing a suit on it being found that the summons has not been served on the defendant, in consequence of the failure of the plaintiff to pay the Court-fee leviable for such service, is not appealable.

* Appeal from Appellate Decree No. 682 of 1881, against the decree of Baboo Mothoora Nath Gupto, Subordinate Judge of Chittagong, dated the 27th January 1881, affirming the decree of Baboo Hurro Chunder Dass, Mansiff of South Boajan, dated the 30th April 1880.