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HEDI LAL
v.
KIRATH
CHAND.

OLDFIELD, J.—The suit in my opinion embraces distinct subjects of the nature of those referred to in s. 17, Court Fees' Act. Here the claim for possession of the house and the claim for rent, which in this suit is by way of damages, arise out of different causes of action and might have been made subjects of different suits. So much of the claim as refers to future rent should be charged for court-fees under cl. i., s. 7, leviable under the provisions of s. 11 of the Act. The objection is quite untenable that this Court has no power to interfere to order that the documents shall be properly stamped, as full power to that effect is conferred by s. 28, Court Fees' Act.

CIVIL JURISDICTION.

Before Mr. Justice Parson and Mr. Justice Straight.

MIAN JAN (AUCTION-PURCHASER) v. MAN SINGH (DECREE-HOLDER).*

Sale in execution—Act X of 1877 (Civil Procedure Code), ss. 311, 312—Review of judgment.

On the day fixed for the sale of certain immoveable property in the execution of a decree the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, no application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that, the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and in valid, and in reviewing its first order and in setting aside the sale as illegal the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal (1).

On the day fixed for the sale of certain immoveable property in the execution of a decree, the judgment-debtor applied to the Subordinate Judge of Aligarh, the Court executing the decree, for the postponement of the sale. This application was granted, the Subordinate Judge making an order for the postponement of the sale. Before this order reached the officer appointed to conduct the sale,

* Application No. 43B. of 1879, for revision of an order of W. C. Turner, Esq., Judge of Aligarh, dated the 5th September, 1879, and of an order of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 28th July, 1879.

(1) See also *Maijha Singh v. Jhoo Lal*, H. C. R., N.-W. P., 1874, p. 354.

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the property had been sold. The Subordinate Judge subsequently, no such application to set aside the sale as is mentioned in s. 311 having been made, passed an order confirming the sale. The decree-holder subsequently applied to the Subordinate Judge for a review of this order. The Subordinate Judge granted this application, and on the 28th July, 1879, made an order setting aside the sale on the ground that it was invalid, inasmuch as an order for its postponement had been passed. The purchaser, who had been a party to the proceedings taken in review, appealed to the District Judge against this order. The District Judge held that an appeal would not lie to him from the order. The purchaser thereupon preferred the present application to the High Court in which he prayed for the revision of the orders of the lower Courts, alleging that the first Court had exercised a jurisdiction not vested in it by law, and the second Court had refused to exercise a jurisdiction so vested.

Mir *Abbar Husain*, for the petitioner.

Munshi *Hannuman Prasad*, for the opposite party.

The judgment of the High Court (PEARSON, J. and STRAIGHT, J.) was delivered by

PEARSON, J.—The first plea in appeal is abandoned as untenable. The statement contained in the second ground of appeal is not accurate. What appears from the proceedings is that the 20th September, 1878, had been fixed for the sale of the judgment-debtor's property in execution of decree in pursuance of an order of the Subordinate Judge, who, on that same date, on the judgment-debtor's application, ordered the sale to be postponed. The sanction to the sale originally given being thus withdrawn, it follows that the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid. It is true that the sale had been effected before the order directing its postponement had reached the officer conducting the sale, but the circumstance, though it exonerates him from blame in the matter, does not make the sale good and valid. It is to be regretted that the Subordinate Judge should have confirmed the sale which he now rightly pronounces to

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have been wholly illegal. It seems that he thought himself precluded from setting it aside *suo motu*, and no application had been made to him to set it aside. Shortly after he had confirmed the sale an application was made to him by the decree-holder to review his order confirming it, whereupon he set aside the sale as illegal, and so virtually reversed his former order. In reviewing his order and setting aside the sale as illegal, we cannot say that he acted *ultra vires* or that his action was otherwise illegal. This application is therefore disallowed and dismissed with costs.

Application dismissed.

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APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

BANNO (DEFENDANT) v. PIR MUHAMMAD (PLAINTIFF).*

Bond—Mortgage—Registration—Act XX of 1866 (Registration Act), s. 17.

The immoveable property charged by a bond payable by instalments, dated the 17th December, 1866, was charged for both principal and interest, and the first instalment was payable within three years from the date of the bond with the accumulated interest, and the amount then becoming due exceeded Rs. 100. *Held*, in a suit on the bond, that it was an instrument creating an interest in immoveable property of the value of Rs. 100 and upwards and under s. 17 of Act XX of 1866 required registration. *Rajputi Kuar v. Ramsukhi Kuar* (1) followed.

THIS was a suit for Rs. 199-13-9, being Rs. 50, the principal amount, and Rs. 149-13-9, the interest, due under a bond dated the 17th December, 1866. The plaintiff, to whom this bond had been assigned by the obligee, one Ali Bakhsh, claimed to recover the money in suit by the sale of the immoveable property hypothecated in the bond. Under the terms of the bond the defendant promised to pay the obligee Rs. 50 in manner following, that is to say, "Rs. 20 with interest at two rupees per cent. per mensem within three years, and Rs. 30 with interest at Rs. 3-2-0 per cent. per mensem within four years;" and he hypothecated certain

* Second Appeal, No. 964 of 1879, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 7th May, 1879, modifying a decree of Maulvi Ain-ud-din, City Munsif, dated the 6th February, 1879.