

CIVIL JURISDICTION.

1879
May 7.

Before Mr. Justice Pearson and Mr. Justice Spankie.

IN THE MATTER OF THE PETITION OF MULO.

Sale in Execution of decree—Return of Purchase-money to auction-purchaser—Act X of 1877 (Civil Procedure Code), s. 315—Act VIII of 1859 (Civil Procedure Code).

Where immoveable property was sold in the execution of a decree under the provisions of Act VIII of 1859, and the auction-purchaser, having been subsequently deprived of such property on the ground that the judgment-debtor had no saleable interest in it, applied under s. 315 of Act X of 1877 to the Court executing such decree for the return of the purchase-money, *held* that the Court could entertain the application.

THE facts of this case were as follows : On the 20th September, 1877, a certain village was sold in the execution of a decree against Husaini Begam as her property, under the provisions of Act VIII of 1859, and was purchased by Nur Ahmad. Subsequently to this sale one Altaf Ali sued Nur Ahmad for the possession of the property and to set the sale aside on the ground that the property belonged to him, he having purchased it from Husaini Begam under a private sale before it was sold to Nur Ahmad by auction. He obtained a decree in this suit on the 30th January, 1878, which the High Court affirmed on appeal on the 13th November, 1878. Nur Ahmad thereupon applied to the District Judge of Bareilly, by whom the decree against Husaini Begam had been executed, for the refund of his purchase-money, on the ground that he had been deprived of the property by reason that Husaini Begam had no saleable interest in it. He made this application with reference to ss. 313 and 315 of Act X of 1877. The decree-holders objected to this application that it could not be entertained under Act X of 1877, as the sale had taken place while Act VIII of 1859 was in force and under its provisions, and that the latter Act did not provide for such an application in the execution of a decree, but left the auction-purchaser to institute a suit. The District Judge held that the provisions of s. 315 of Act X of 1877 were applicable to the case, and ordered the refund of the purchase-money.

Application, No. 3 B. of 1879, for revision of an order of W. Tyrrell, Esq., Judge of Bareilly, dated the 20th December, 1878.

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The decree-holder applied to the High Court to set aside the order of the District Judge, under the powers conferred on it by s. 622 of Act X of 1877, on the ground that the District Judge had exercised a jurisdiction not vested in him by law.

Mr. Conlan, with him the *Junior Government Pleader* (Babu *Dwarkanath Banarjé*) and *Munshi Hanuman Prasad*, shewed cause.—The application by the auction-purchaser for the refund of the purchase-money was a fresh proceeding, and instituted after Act X of 1877 came into operation, and the District Judge was therefore competent to entertain it. In acting under the provisions of s. 622 of Act X of 1877, the High Court is not compelled to set aside every order that is made without jurisdiction. The order of the District Judge was just and equitable, and the High Court in the exercise of its discretion should allow it to stand.

Pandit *Ajudhia Nath*, with him Mr. *Colvin* and *Lala Lalta Prasad*, for the petitioner.—The sale having taken place while Act VIII of 1859 was in force, and consequently under its provisions, the District Court could only deal with the purchase-money under the provisions of that Act. That Act does not contain any provisions for the refund of the purchase-money such as are contained in ss. 313 and 315 of Act X of 1877. In applying these sections and entertaining the application the District Judge acted without jurisdiction, and his order should be set aside.

The judgment of the Court was delivered by

PEARSON, J.—The Judge's order seems to be a very right, just and proper one, with which we ought not to interfere, unless absolutely bound to do so. The proceedings commenced under Act VIII of 1859 appear to have terminated with the sale. The application under s. 315 of Act X of 1877 may be regarded as a new proceeding. We are not prepared to say that the Judge could not entertain the application preferred to him under the second clause of s. 315, Act X of 1877; and we therefore decline to interfere, and dismiss this application with costs.

Application dismissed.