

which it may be assumed it was the intention of the person who procured the endorsement to make on the face of the stamp-paper. The offence of forgery had therefore not proceeded beyond the stage of preparation, but in the case now before the Court there had been an actual fabrication: something had been done. It is true that no judicial proceeding had been instituted, but the petitioner's pleader is unable to suggest any other object for which the false endorsement should have been procured. The petitioner had undoubtedly threatened Chattar Singh that he would make him pay Rs. 50. He could not have carried out his threat without the intervention of the Court. The object of the endorsement made by the vendor of a stamp is to afford proof of the person to whom it is sold, and in suits brought on documents written on stamp-paper it is the usual course, when the execution of the document is denied, to advert to the endorsement and to the stamp-vendor's memory assisted by the endorsement as evidence of the person to whom the stamp was sold, and therefore as evidence of the probability that the document was made by the person by whom the paper was procured. I do not say that in the case cited the accused should have been discharged. Had the point been taken the Court might have held the accused guilty of the offence of which the petitioner has been convicted, but I am of opinion that in the case before the Court the evidence for the prosecution warranted the inference that the petitioner procured the false endorsement for the purpose of thereafter using it in a judicial proceeding, and consequently that the conviction is not open to the objection taken to it. I affirm it, and dismiss the application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Turner and Mr. Justice Spankie.

THE COURT OF WARDS ON BEHALF OF THE RAJA OF KANIT (PLAINTIFF) v.

GAYA PRASAD AND OTHERS (DEFENDANTS).*

Substitution or addition of new Appellant or Respondent—Act XV of 1877 (Limitation Act), s. 22—Appellate Court, Powers of—Sale in Execution of Decree—Act VIII

* Second Appeal, No. 517 of 1878, from a decree of H. A. Harrison, Esq., Judge of Mirzapur, dated the 11th March, 1878, reversing a decree of Mirza Abid Ali Beg, Subordinate Judge of Mirzapur, dated the 27th November, 1877.

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1879 of 1859 (*Civil Procedure Code*), ss. 256, 257—*Suit for recovery of purchase-money—Caveat Emptor—Irregularity.*

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An appellate Court has a discretionary power to substitute or add a new appellant or respondent after the period of limitation prescribed for an appeal.

The right, title, and interest of *G* in certain immoveable property was attached and notified for sale in the execution of a money-decree held by *T*. It was also attached and notified for sale in the execution of a money-decree held by *S* and *R*. The same date was fixed for both sales. The officer conducting sales first sold the property in execution of *T*'s decree, and *T* purchased the property. He then sold the property in execution of the decree held by *S* and *R*, and *K* purchased the property. The Court executing the decrees confirmed the sale to *T*, granting him a sale-certificate, and disallowing *K*'s objection to the confirmation. It also confirmed the sale to *K*, ordering the purchase-money to be paid to *S* and *R*, and disallowing *K*'s objection to the confirmation; but it refused to grant *K* a sale-certificate on the ground that, as the sale to *T* had been confirmed and a sale-certificate granted to him, it could not give *K* possession of the property. In a suit by *K* against *S* and *R* to recover his purchase-money, held, distinguishing the suit from the cases in which it had been held that, when the right, title, and interest of a judgment-debtor in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction-purchaser cannot recover his purchase-money if it turns out that the judgment-debtor had no interest in the property, that the rule of *caveat emptor* did not apply, and the suit was maintainable.

The provisions of s. 257 of Act VIII of 1859 apply to applications made under s. 256 of that Act and to those only.

Held therefore that, inasmuch as *K* objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified, and not on any of the grounds mentioned in s. 256 of Act VIII of 1859, *K* was not precluded by the terms of s. 257 of that Act from maintaining his suit.

Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales.

THIS was an appeal from an appellate decree dated the 11th March, 1878. This appeal was filed on the 31st May, 1878, the original respondents being Gaya Prasad and Girdhari Prasad, two of the defendants in the suit out of which the appeal arose. On the 28th June, 1878, a *vakalat-nama* was filed appointing a pleader to defend the appeal on behalf of Ram Manorath, the third defendant in the suit. On the 22nd August, 1878, an application was made to the High Court on behalf of the appellant in which it was

stated that by an oversight Ram Manorath had not been made a party to the appeal, and praying that, as he had appeared to defend the appeal, he might be made a respondent. On the same date the Court (Oldfield, J.) made an order in accordance with this application. The remaining facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court.

The *Senior Government Pleader* (Lala Juala Prasad,) for the appellant.

Pandit *Ajudhia Nath*, for the respondents.

The judgment of the Court was delivered by

TURNER, J.—The first question arising in this appeal is whether or not the appeal so far as it affects Ram Manorath is barred by limitation. By some carelessness he was not at first made a respondent, and the period prescribed for appeal had expired before he was brought on the record as a respondent. By the 22nd section of the Limitation Act it is provided that when after the institution of a suit a new plaintiff or defendant is substituted or added, the suit shall as regards him be deemed to have been instituted when he was so made a party. There is no analogous provision with respect to appeals, and therefore it is competent to the Court to exercise its discretion in allowing a party to be added to the record after the period prescribed for the admission of an appeal has elapsed. The lower appellate Court throughout its judgment alludes to the decree held by Gaya Prasad and Ram Manorath as “the decree of Gaya Prasad,” and omits any mention of Ram Manorath, and this circumstance may have led the appellant’s pleader to suppose that Ram Manorath was not a material party to the appeal, as the appeal was in other respects filed within time and prosecuted with due diligence. We are not prepared to set aside the *ex-parte* order for making Ram Manorath a respondent to the appeal.

The circumstances which have led to the present proceedings are as follows: The rights and interests of Girdhari Prasad Singh in mauza Tilai were attached and advertised for sale, under separate orders, in execution of a decree held by Thakur Dayal and in execution of a decree held by Gaya Prasad and Ram Manorath. The same

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date, the 20th September, was fixed for the sale in execution of both decrees. On the 20th September the officer conducting the sale at first put up the property in execution of the decree of Thakur Dayal, which it would appear was entitled to priority of satisfaction, and the property was purchased by the decree-holder. He then again put up the property for sale in execution of the decree of Gaya Prasad and Ram Manorath, and it was purchased by the agent of the appellant. The Court executing the decrees confirmed the sale in execution of Thakur Dayal's decree, and delivered a sale-certificate to the auction-purchaser. It also confirmed the second sale, and ordered the purchase-money to be paid to the decree-holder, but it held that, inasmuch as the sale to the purchaser in execution of Thakur Dayal's decree had already been confirmed and a certificate issued, it could not give possession to the appellant as the purchaser in execution of the decree of Gaya Prasad and Ram Manorath, and therefore refused to grant a certificate in respect of that sale.

The appellant instituted the present proceedings to obtain a refund of the purchase-money paid under the second sale. The Court of first instance decreed the claim on the ground that although the property ought to have been put up for sale once for all in execution of both decrees, yet having in fact been sold in execution of Thakur Dayal's decree and the sale confirmed, it was not competent to the Court executing the decree to confirm the second sale, as was shown by its inability to issue a certificate and deliver possession. The lower appellate Court reversed the decree on the ground that, when the appellant's objection to the confirmation of the second sale had been disallowed, he ought to have appealed, and that, having failed to appeal, the order confirming the sale became final under s. 257 of the Civil Procedure Code. The lower appellate Court also adverts to cases (1) in which it has been held that, when the right, title and interest of a judgment-debtor in a particular property is sold, there is no warranty that he has any right, title or interest, and therefore that he cannot

(1) These cases were *Rajib Lochan v. Bimalamini Dasi*, 2 B. L. R., A. C. 82; and *Sowdamini Chowdrain v. Krishna Kishor Poddar*, 4 B. L. R., F. B. 11; 12 W. R., F. B. 8.

recover his purchase-money if it turn out that the judgment-debtor had no interest in the property.

It appears to us that there is a circumstance in the present case which distinguishes it from the cases in which the rule referred to by the Judge was laid down. In these cases the Court advertised for sale whatever interest the judgment-debtor had in the property, and although it did not guarantee that he had any interest in the property, it sold and confirmed to the purchaser whatever interest there was to sell. In the case before the Court the interest advertised for sale had immediately before the sale to the appellant been already sold by the order of the Court executing the decrees in execution of the decree of Thakur Dayal, and when that sale was confirmed the subsequent sale was practically disallowed and nullified. The Court had advertised for sale the interest of the judgment-debtor as it existed before the sale made in execution of Thakur Dayal's decree. When the sale had been declared absolute, the Court could not confirm to the purchaser at the second sale the interest it had advertised for sale, and although in terms it passed an order confirming the second sale, it in fact did not confirm the second sale, as the Court of first instance observes, for it found it impossible to carry out its order by the issue of a certificate and delivery of possession to the purchaser at the second sale, seeing it had already confirmed the sale of the same interest, and transferred the property to the purchaser at the first sale. The rule of *caveat emptor* does not apply, for the interest offered for sale was the interest advertised, and if the first sale had been disallowed, that interest would have passed to the purchaser at the second sale, but when the first sale was confirmed the second sale could not be carried out, for the interest advertised had been already sold.

The question remains whether the appellant is precluded from maintaining this suit because he failed to appeal from the orders confirming the sales. The lower appellate Court finds there was no irregularity in the conduct of the sales, inasmuch as the officer conducting the sale simply carried out the orders he had received, and it appears to us the lower Court has properly arrived at this conclusion. It is no doubt true that the officer conducting the sale

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might have put up the property to sale once for all in execution of both decrees, and have left the Court executing the decrees to determine the rights of the respective decree-holders to the purchase-money realised by the sale, but we cannot go so far as to say he was bound to put up the property once for all for sale in execution of the decrees. There being separate orders for sale, the decree-holders might have called upon him to execute them separately, each desiring to dispute the right of the other. There was certainly no irregularity in the conduct of the sale in execution of the decree of Thakur Dayal; and if that sale had been set aside for any irregularity or otherwise, it does not appear that any irregularity would have been proved to vitiate the sale in execution of the decree of Gaya Prasad and Ram Manorath, and this being so the purchaser at the second sale could not have maintained an objection to either sale on any of the grounds mentioned in s. 256 of Act VIII of 1859. His objection was in fact of a different nature. His objection to the sale in execution of Thakur Dayal's decree having been overruled, he resisted the order confirming the second sale on the ground that the Court was incompetent to confirm a sale which had by its previous order been nullified. The provisions of s. 257 apply to applications made under s. 256 and to those only, and consequently the appellant is not in our judgment precluded by the terms of that section from maintaining this suit. We therefore reverse the decree of the lower appellate Court, and restore that of the Court of first instance with costs.

Appeal allowed.

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 January 26.

Before Mr. Justice Turner and Mr. Justice Oldfield.

BHICHUK SINGH AND OTHERS (JUDGMENT-DEBTORS) v. NAGESHAR NATH
 AND OTHERS (DECREE-HOLDERS).*

Special Appeal—Suit of the nature cognizable in a Small Cause Court—Act XXIII of 1861, s. 27—Act XLIII of 1860, s. 1.

Held, where a suit of the nature cognizable in a Court of Small Causes was instituted before Act XLIII of 1860 came into force, and an order was made on regular appeal in execution of the decree in such suit after the passing of Act XXIII of 1861, that the provisions of s. 27 of Act XXIII of 1861 applied, and accordingly no special appeal would lie from such order(1).

* Application, No. 4 of 1878, for a review of the judgment in Appeal from orders, No 13 of 1878, dated the 25th June, 1878.

(1) See also *Gora Chand Misser v. Raja Baykanto Narain Singh*, 12 B. L. R. 261.