

It is, I think, obvious that the mare was restive owing to want of a proper amount of work for some days prior to the time that she was let to the defendant for hire; that she consequently plunged and backed and then ran away with the defendant in spite of all his efforts to restrain her; and that the cause of death was rupture of the diaphragm owing to the mare having galloped when her stomach was distended with food which had been given her in the plaintiff's stables shortly before she was let to the defendant for hire. Under these circumstances, the plaintiff alone was, I consider, responsible for the mare's death; and I therefore concur in allowing the application and in reversing the decree of the lower Court with all costs.

Application granted.

APPELLATE CIVIL.

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February 11.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

BALDEO SINGH (JUDGMENT-DEBTOR) v. KISHAN LAL AND ANOTHER
(DECREE-HOLDERS.)*

Execution of decree—Civil Procedure Code, ss. 311, 312,—Objection to sale—Limitation—Legal disability—Act XV of 1877 (Limitation Act) s. 7.—Order confirming sale before time for filing objections has expired—Appeal from order.

Although s. 312 of the Civil Procedure Code contemplates that objections to a sale under s. 311 shall be filed before an order for confirmation is passed, if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objections to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere and to see that objections which by law the appellant is empowered to make are heard and determined before a sale of his property is confirmed or becomes absolute.

An application under s. 311 of the Civil Procedure Code, on behalf of a judgment-debtor who was a minor was rejected on the ground that the applicant did not legally represent the minor, and the Court thereupon confirmed the sale. A second application to the same effect was then filed on behalf of the minor by his guardian, and was rejected on the ground that the Court had already confirmed the sale, and was precluded from entertaining objections after such confirmation, prior to which no proper application of objection had been filed. From this order the judgment-debtor appealed.

* First Appeal No. 295 of 1886 from an order of Maulvi Saiyyid Muhammad, Subordinate Judge of Aligarh, dated the 2nd August, 1886.

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Held that the appeal must be considered to be one from an order under the first paragraph of s. 312 of the Civil Procedure Code, confirming the sale after disallowing the appellant's objection, and that it would therefore lie.

Held that, assuming the first application on the minor's behalf to have been rightly rejected, the second was made by a duly authorized guardian, and, with regard to s. 7 of the Limitation Act (XV of 1877), was not barred by limitation; and the judgment-debtor had therefore a right to make it, and the Court should have entertained and dealt with it before proceeding to confirm the sale or grant a sale-certificate.

The order disallowing the application and the order confirming the sale were set aside, and the case remanded for disposal of the appellant's objections.

Phoolbas Koonwar v. Jogeshur Sahoy (1) referred to.

The facts of this case are stated in the judgment of the Court.

Munshi *Kashi Prasad*, for the appellant.

Kunwar Shivanath Sinha, for the respondents.

OLDFIELD and BRODEURST, JJ.—This appeal is instituted by Baldeo Singh, a minor, through his guardian Balwant Singh, against an order of the Subordinate Judge of Aligarh, refusing to set aside a sale of immoveable property. The appellant was a judgment-debtor represented by Balwant Singh, his guardian, who was also himself a judgment-debtor under the decree. Execution was taken of the decree by the respondents-decree-holders, and the property put up to sale, and sold on the 20th September, 1885, and purchased by the decree-holders. The mother of Baldeo Singh filed objections to the sale under s. 311 of the Civil Procedure Code, but the application was rejected on the ground that she did not legally represent the minor. The order was made on 11th January, 1886. On the following day, the 12th January, objections were filed by Balwant Singh on the minor's behalf, and on the 2nd August following, the Subordinate Judge rejected the application, on the ground that he had, on the 11th January, confirmed the sale, and was precluded from entertaining objections under s. 311 after such confirmation, prior to which no proper application of objection had been filed. It is from this order that the present appeal is lodged.

It was objected that no appeal will lie to this Court, but we overrule this objection, as the appeal must be considered to be one from an order under the first paragraph of s. 312 confirming the

sale after disallowing the appellant's objection to the sale. The material point is whether the order is one we should interfere with. Now, assuming that the first application made on the minor's behalf by his mother was improperly made, as she did not legally represent him, and that the Subordinate Judge was right in refusing to entertain it, the second application of objection to the sale was made by a duly authorized guardian, Balwant Singh; and with regard to s. 7 of the Limitation Act it must be held not to be barred by limitation—on this point there is the authority of the Privy Council in *Phoolbas Koonour v. Lalla Jogeshur Sahoy* (1). It was therefore an application which the judgment-debtor-appellant had a right to make, and which it was the duty of the Subordinate Judge to have entertained and dealt with before he proceeded to confirm the sale or grant a sale-certificate. No doubt s. 312 contemplates that objections to a sale under s. 311 shall be filed before an order for confirmation is passed, but if the precipitate action of the Court has led to the confirmation of a sale before the time allowed for filing objections to the sale has expired, whether or not the Court below could entertain such objections after it had confirmed the sale, we are of opinion that this Court, when the case has come before it in appeal, is bound to interfere, and to see that objections which by the law the appellant is empowered to make, are heard and determined before a sale of his property shall be confirmed or become absolute.

We set aside the order of the Court below of the 2nd August and the order confirming the sale, and remand the case in order that the objections of the appellant be heard and determined, and the case disposed of according to law.

Costs to be costs in the cause.

Case remanded.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Brodhurst.

GHERAN (PLAINTIFF) v. KUNJ BEHARI AND OTHERS (DEFENDANTS).*

Act I of 1872 (Evidence Act), s. 115—Equitable estoppel—Decrees, priority of.

A decree-holder at a sale in execution of his decree purchased a zamindari share belonging to his judgment-debtors. Afterwards, in execution of a subse-

* Second Appeal No. 501 of 1886 from a decree of Maulvi Shahi Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 10th February 1886, reversing a decree of Maulvi Abdul Razzak, Munsif of Bansi, dated the 3rd December, 1885.

(1) I. L. R., 1 Cal., 226.

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