

those costs have been incurred, or the greater portion of them. On the above ground, I would reject the application.

BRODHURST, J.—I entirely concur with my brother Oldfield that this preliminary objection must be rejected.

[The appeal was then heard and dismissed.]

Appeal dismissed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

SANT LAL AND ANOTHER (OBJECTORS) v. RAMJI DAS AND OTHERS
(DECREE-HOLDERS).*

Sale in execution of decree—Setting aside sale—Incumbrance—“Saleable interest”—Civil Procedure Code, s. 313.

The fact that property sold in execution of a decree is incumbered, even when the incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no saleable interest therein. S. 313 of the Civil Procedure Code contemplates that either the judgment-debtor had no interest at all, or that the interest was not one he could sell; and the fact that the property may fetch little or nothing if sold does not affect the question. *Naharmul v. Sadut Ali* (1) distinguished. *Pratap Chunder Chuckerbutty v. Panioty* (2) referred to.

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

The Hon. Pandit *Ajudhia Nath* and Pandit *Nand Lal*, for the appellants.

The Hon. T. Conlan, Mr. *Abdul Majid*, and Munshi *Hanuman Prasad*, for the respondents.

OLDFIELD, J.—This is an appeal from an order refusing to set aside a sale, and made with reference to s. 313 of the Civil Procedure Code.

The sale was of half a house belonging to the judgment-debtors, which was sold in execution of a decree for Rs. 8,937, and was bought by the appellants for Rs. 5,751. The appellants ask that the sale be set aside, on the ground that the judgment-debtors had no saleable interest in the property, there being a mortgage on the property amounting to a sum exceeding its market-value.

In my opinion this is no ground for setting a sale aside under s. 313. The fact that the property is incumbered, even when the

* First Appeal No. 195 of 1886, from an order of Babu Brijpal Das, Subordinate Judge of Meerut, dated the 28th August, 1886.

(1) 8 Calc. L. R., 468. (2) L. L. R., 9 Calc., 506.

1886
 SANT LAL
 v.
 RAMJI DAS.

incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold, has no saleable interest in the property under s. 313. There is always the equity of redemption remaining. What I understand that section to contemplate is, that either the judgment-debtor had no interest at all, or that the interest was not one he could sell. The fact that the property may fetch little or nothing, if sold, does not affect the question.

We have been referred to *Naharmul v. Sadut Ali* (1) but that case is not on all fours with the case before us, which is more in accord with a subsequent case—*Protap Chunder Chuckerbutty v. Fanioty* (2), which the Judges distinguish from *Naharmul v. Sadut Ali* (1).

For these reasons I would dismiss this appeal with costs.

BRODHURST, J.—I concur.

Appeal dismissed.

1886,
 December 17.

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

SHEOAMBAR AND OTHERS (DEPENDANTS) v. DEODAT (PLAINTIFF)*.

Arbitration—Agreement to refer—Order under s. 506 of the Civil Procedure Code to refer matters in dispute in action then pending—Order under s. 373, pending the reference, granting plaintiff permission to withdraw with liberty to bring fresh suit—Act I of 1877 (Specific Relief Act), s. 21.

The wording of s. 21 of the Specific Relief Act (I of 1877) is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceeding in Court.

The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877).

* Second Appeal No. 246 of 1886, from a decree of Maulvi Shah Ahmad-ullah, Subordinate Judge of Gorakhpur, dated the 11th January, 1886, confirming a decree of Munshi Raj Nath Prasad, Munsif of Basti, dated the 24th September, 1885.

(1) 8 Calc. L. R., 463.

(2) I. L. R., 9 Calc. 506.