

or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety." This is the section applicable to the present case. The law on the subject has been considered by the Bombay High Court in the case of *Hajarimal v. Krishnarav* (1), and the view there taken is the same as that which we have expressed.

The decree, therefore, of the lower Appellate Court must be set aside. But as there are questions affecting the amount due to the plaintiffs raised both on the appeal presented to that Court and on the cross-appeal, the case must go back to the lower Appellate Court in order that that Court may determine the amount of the liability of the defendant.

The appellants will have the costs of this appeal. The costs in the lower Courts will abide the result of the suit.

H. T. H.

Appeal allowed and case remanded.

Before Mr. Justice Prinsep and Mr. Justice Grant.

BYKANT NATH SHAHA (PLAINTIFF) v. RAJENDRO NARAIN RAI
AND OTHERS (DEFENDANTS.)*

1886.

September 10.

Civil Procedure Code—Act XIV of 1882, ss. 285, 295—Jurisdiction—Sale by inferior Court pending an unknown attachment by a superior Court.

At an execution sale held by an inferior Court, at the instance of the decree-holder (the Court itself, the decree-holder, and the auction-purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), A purchased certain property and this sale was confirmed. It appeared subsequently that this same property had two years previous to the sale been attached by a superior Court. On a sale of this property being advertized by the superior Court, A objected on the ground that he had already purchased it; this objection was overruled, and a sale was held by the superior Court, at which A again became the purchaser. A then brought a suit against the decree-holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale. The suit was dismissed. *Held*, that although the superior Court had been wrong in insisting on the second sale and in not requiring the

* Appeal from Appellate Decree No. 1981 of 1884, against the decree of F. F. Handley, Esq., Judge of Rajshaye, dated the 5th of August 1884, affirming the decree of Baboo Ambica Charan Dut, Officiating Additional Munsiff of Malda, dated the 10th of September 1883.

(1) I. L. R., 5 Bom., 547.

1885
KRISHTO
KISHORI
CHOW-
DERAIN
v.
RADHA
ROMUN
MUNSHI.

1886
 BYKANT
 NATH
 SHAHA
 v.
 RAJENDRO
 NARAIN
 RAI.

amount received by the inferior Court to have been deposited in the superior Court, and then rateably distributed amongst the creditors of the judgment-debtors, yet the sale by the inferior Court was a good and valid sale; and A's suit was therefore rightly dismissed. *Obhoy Churn Coondoo v. Golam Ali* (1) adopted.

THIS was a suit to recover Rs. 800 as damages.

It appeared that on the 29th September 1882 the plaintiff purchased, for a sum of Rs. 800, certain properties which had been attached and put up for sale under a decree obtained by one Rajendro Narain Rai against Chunder Mohun Misri and Bhugwan Chunder Misri in the Court of the Munsiff of Malda. On the 23rd November 1882, the plaintiff, having paid the purchase money into Court, obtained an order confirming the sale. It, however, appeared that the same properties had, previous to the attachment and sale above mentioned, been attached on the 18th July 1880 by one Komarrunissa Begum, who had obtained a decree against the same judgment-debtors in the Court of the Subordinate Judge of Rajshaye, the Munsiff of Malda at that time being subordinate to the Judge of Rajshaye.

The plaintiff having discovered, after he had purchased the properties, that they were again advertised for sale under the decree last mentioned by order of the Subordinate Judge of Rajshaye, put in an objection to the sale on the ground that he had already purchased these properties at the sale held by the Munsiff. The Subordinate Judge, however, overruled this objection, deciding that under s. 285 of the Civil Procedure Code the Munsiff of Malda had no power to sell the properties.

The plaintiff attended at the sale held by the Subordinate Judge, and again became the purchaser of the properties.

He subsequently to the purchase brought the present suit against the Misris and Rajendro Narain Rai to recover by way of damages the sum of Rs. 800 paid by him at the sale held by the Munsiff of Malda, alleging that the attachment of the 18th July 1880 had been fraudulently concealed from him, and contending that the Munsiff had no jurisdiction to hold the sale, and that those proceedings were, therefore, null and void.

The lower Courts found that the decree-holder and the

(1) I. L. R., 7 Calo., 410.

Munsiff were ignorant of the previous attachment, and that the Munsiff was competent to hold the sale in execution of his own decree, and that he had conferred a valid title on the purchaser; and therefore dismissed the plaintiff's suit.

The plaintiff appealed to the High Court.

Baboo *Srinath Dass* and Baboo *Lal Mohun Dass*, for the appellant, contended that under s. 285 of the Civil Procedure Code, the Munsiff had no jurisdiction to hold the execution sale, and that the sale was void; he also relied on the cases of *Chunni Lall v. Debi Prasad* (1), *Badri Prasad v. Saran Lal* (2), and *Muttu Karuppan Chetti v. Mutturamalinga Chetti* (3).

Baboo *Kalikkissen Sen*, for the respondents, contended that it was doubtful whether s. 285 applied to immoveable property, and cited *Obhoy Churn Coondoo v. Golam Ali* (4).

The judgment of the Court (PRINSEP and GRANT, JJ.) was as follows:—

In execution of a decree obtained in the Court of the Subordinate Judge of Dinagepore, certain property belonging to defendants Nos. 2 and 3 was attached by the Subordinate Judge of Rajshaye. For certain reasons, however, there was delay in holding the sale. Meantime, in execution of another decree held by an entirely different party, the same property was attached by the Munsiff of Malda in the same district. At the sale held by the Munsiff of Malda, the plaintiff, on the 29th September 1882, purchased the property, paid in the entire purchase money, and obtained an order confirming the sale on the 23rd November 1882. Proceedings were then taken in the Court of the Subordinate Judge of Rajshaye to bring that property to sale. The purchaser in the Munsiff's Court objected; his objection was overruled: but at the sale subsequently held he again purchased. He now brings this suit to realize, from the decree-holder in the Munsiff's Court as well as from the judgment-debtors, the amount paid, viz., Rs. 800, as damages, contending that the Munsiff had no jurisdiction to hold that sale, and that his proceedings are therefore null and void.

(1) I. L. R., 3 All., 356.

(2) I. L. R., 4 All., 359.

(3) I. L. R., 7 Mad., 47.

(4) I. L. R., 7 Cal., 410.

1885

BYRAMP
NATH
SHAKA
v.
RAJENDRO
NARAIN
RAI.

1886

BYKANT
NATH
SHAHA
v.
RAJENDRO
NARAIN
DAL

The suit has been dismissed by both the lower Courts. It has been found that the decree-holder and the Munsiff were ignorant of the previous attachment; that the Munsiff was competent to hold the sale in execution of his own decree, and that he conferred a valid title on the purchaser. The appellant's pleader relies on s. 285 of the Civil Procedure Code, and some decisions of the High Courts of Allahabad and Madras, which declare that under the circumstances stated an inferior Court has no jurisdiction to hold an execution sale, and that such a sale is null and void.

In the case of *Chunni Lal v. Debi Prasad* (1), the judgments delivered did not proceed on the same ground, and although the learned Judges discussed the meaning of s. 285, their opinions were not altogether in accord. Mr. Justice Spankie held that that section dealt with matters preceding a sale, and that no provisions appear to have been made for a case where a sale has been held, and requires to be confirmed, and where in one Court the sale has been cancelled and in the other it has been confirmed. Mr. Justice Oldfield, on the other hand, was of opinion that that section was intended to give the Courts specified therein exclusive power in all matters connected with sales.

In the matter of the petition of *Badri Prasad v. Saran Lal* (2), the same question was again considered. The sale in that case was held by the Munsiff, although there was at that time an attachment of the same property by the Court of the Subordinate Judge. The attaching creditors in the Court of the Subordinate Judge made objection to the confirmation of the sale by the Munsiff, and, on that objection being disallowed, they invoked the interference of the High Court under s. 622. The Court held that the Munsiff was not competent to hold the sale, and stated: "When several decrees of different Courts are out against a judgment-debtor, and his immovable property has been attached in pursuance of them, the law contemplates, no matter whether such Courts be of the same or different grades, that *one* Court and *one* Court only shall have the power of deciding objections to the attachment; of determining claims made to the property; of ordering the sale there-

(1) I. L. R., 3 All., 356.

(2) I. L. R., 4 All., 359.

of, and receiving the proceeds, and of providing for their distribution under s. 295." It was accordingly held that that sale was a bad sale as being held in pursuance of the order of a Court that had no jurisdiction to direct it. The same matter was considered by the Madras High Court in the case of *Muttukaruppan Chetti v. Mutturamalinga Chetti* (1.) In that case the property was attached by the Munsiff's Court and advertized for sale, but before the sale took place it was attached by the Subordinate Judge's Court and again sold. The question of title arose between these two purchasers, and it was held that the sale in the Subordinate Judge's Court alone conferred a valid title, the sale in the Munsiff's Court being null and void. The appellant's case depends upon these judgments, and the view of the law thus expressed. This matter has come before this High Court in only one reported case, *viz., Obhoy Churn Coondoo v. Golam Ali* (2). The facts of that case are similar to the case now before us. The Judges doubted whether s. 285 applied to immoveable property at all, but they stated that "even assuming that the section does apply to immoveable property, there is nothing in it, so far as we can see, which would absolutely destroy the validity of a sale already made, provided the proceeds of such sale were paid into the Court under whose decree the property was first attached." They accordingly held that, in spite of the opposition made by the second purchaser under the first attachment of the superior Court, the first purchaser in the inferior Court was entitled to a decree for rent due from the property purchased. "At the same time we observe that the learned Judges, having regard to certain special circumstances connected with the plaintiff's purchase, and, so far as we can learn from the report, not connected with the jurisdiction of the Court which held the sale, reserved liberty to the second purchaser to institute any suit with respect to the title to the land that he might be advised to bring against the plaintiff. The present Code, in directing under s. 295 that the assets realized in execution of a decree shall be divided rateably amongst all persons who, prior to the realization, have applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, as

1885

 BYKANT
 NATH
 SHAHA
 D.
 RAJENDRO
 NARAIN
 RAI.

(1) I. L. R., 7 Mad., 47.

(2) I. L. R., 7 Calc., 410.

1885

RYKANT
NATH
SHAMA
o.
RAJENDRO
NARAIN
RAI.

between the several judgment-creditors, has made it immaterial in execution of which of the decrees the sale of the attached property should be held. The object of all the decree-holders is to bring the property to sale, so that they may all participate in the assets realized. The object of s. 285 no doubt is, as has been pointed out by the Allahabad High Court, to prevent confusion in the execution of decrees by providing for certain proceedings to be held by the superior Court where the Courts of execution are of different grades, or by the first attaching Court where both Courts have equal jurisdiction. Strictly speaking, therefore, no such proceeding should be taken except under the direction of one of these two Courts; but where an execution sale has been held by an inferior Court at the instance of the decree-holder (the Court itself, the decree-holder and the auction-purchaser being without any information of any objection to the exercise of a jurisdiction which that Court would ordinarily be competent to exercise), and that sale has been confirmed without any objection raised, we are not prepared to say that a title so obtained is not a valid title. The Subordinate Judge did not exercise a proper discretion in holding that the Munsiff's sale was without jurisdiction and in insisting on a sale in his Court. He should rather have accepted that sale and have required the deposit in his Court of the assets realized, so that they might be rateably distributed amongst all the decree-holders. We are not prepared to hold, under the circumstances stated, that no valid title was conferred by the sale in the Munsiff's Court which was regularly held and duly confirmed. The course taken by the Subordinate Judge in re-selling the property was one almost certain to result in loss to the judgment-debtor, for, with notice of a previous sale and with the almost certainty of a litigation to settle a contested title, bidders were not likely to offer the full value of the property. That that has been the result in the proceedings before us we have been unable to ascertain. The plaintiff has merely stated the sum paid at the first sale, and there is nothing, so far as we can learn, to show the amount realized at the second sale. The defendant-respondent's pleader, however, maintains that a similar sum was realized. That, however, for the purposes of the case

before us is immaterial. We would only refer to the matter to point out to the Subordinate Judge the almost certain consequence of his mistaken action.

As the sale had already taken place and been confirmed, the Sub-Judge would have exercised a better discretion if he had refused to re-sell, and had sent for the assets for distribution in his Court.

We are unable to hold that the sale by the Munsiff was null and void, as it was perfectly regular so far as the facts were known to the parties concerned and the Mnsiff himself. The existence of an attachment by the Subordinate Judge would not in itself invalidate these proceedings. We accordingly adopt the view taken in the case cited above and dismiss this appeal with costs.

T. A. P.

Appeal dismissed.

1885

BYKANT
NATH
SHAHA
v.
RAJENDRO
NARAIN
RAI.

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Knight, Chief Justice, and Mr. Justice Wilson.

ANDERSON, WRIGHT AND Co. (PLAINTIFFS) v. KALAGARLA SURJI-NARAIN (DEFENDANT.)^{*}

1885

September 5.

Civil Procedure Code, Act XIV of 1882, s. 43—Breaches of one term in a contract, how sued upon—Cause of action—Contract.

Per GARTH, C.J.—A claim for the price of goods sold is a cause of action of a different nature from a claim for damages for non-acceptance of goods pursuant to a contract.

Such claims, therefore, although arising under one and the same contract, may be sued upon separately, s. 43 of the Code of Civil Procedure notwithstanding.

Per WILSON, J.—Where there is one contract for the purchase of goods, and the purchaser takes some of the goods, but breaks his contract, in part by not paying for the goods he takes, and in part by not taking and paying for the remainder, and both breaches occur before any suit is brought, the claim of the person suing is one arising out of one cause of action; and the whole claim must be included in one suit.

THIS was a reference from the Court of Small Causes.

^{*} Small Cause Court Reference No. 3 of 1884, made by H. Millet, Esq., First Judge of the Calcutta Court of Small Causes.