

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

NATHU MAL (PURCHASER) v. LACHMI NARAIN (DECREE-HOLDER).*

1886
October 21.

Civil Procedure Code, ss. 313, 320—Transfer of execution of decree to Collector—Jurisdiction of Civil Courts to entertain application under s. 313—Rules prescribed by Local Government under s. 320—Notification No. 671 of 1880, dated the 30th August.

Held that an application under s. 313 of the Civil Procedure Code by the purchaser at a sale in execution of a decree which had been transferred for execution to the Collector in accordance with the rules prescribed by the Local Government was entertainable by the Civil Courts, and the Collector had no jurisdiction under the Code or under Notification No. 671 of 1880 to entertain it. *Madho Prasad v. Hansa Kuar* (1) referred to.

THIS was an appeal from an order of the Subordinate Judge of Bareilly, dated the 10th April, 1886, rejecting an application under s. 313^o of the Civil Procedure Code. It appeared that under the rules prescribed by the Local Government under s. 320 of the Civil Procedure Code (Notification No. 671 of 1880, dated the 30th August), the execution of a decree was transferred by the Subordinate Judge to the Collector. The Collector sold the property ordered to be sold, a share in a village, on the 20th January, 1886, and it was purchased by the appellant, Nathu Mal. The sale was subsequently confirmed by the Collector under the rules mentioned above. After this Nathu Mal applied to the Subordinate Judge, under s. 313 of the Civil Procedure Code, to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold. This application was opposed by the decree-holder, and the Subordinate Judge rejected it on the ground that it was not entertainable by him. He observed as follows:—

“In my opinion the application of the purchaser (applicant) is not entertainable under s. 313 of the Civil Procedure Code, because the landed share was not sold by this Court, but the execution of the decree was transferred to the Collector. S. 313 applies to sales made by the order of the Court, and not to sales made by the Collector under decrees transferred to his file. A sale like the present cannot be set aside except on the application of the decree-holder or the judgment-debtor whose property has been sold. The Court is bound to obey these rules, and these rules relate especially

* First Appeal No. 82 of 1886, from an order of Lala Banwari Lal, Subordinate Judge of Aligarh, dated the 10th April, 1886.

(1) I. L. R., 5 All. 314.

1886

NATHU MAL
v.
LACHMI
NARAIN.

to sales effected by the order of the Collector. Rule 13 of the Notification provides for the confirmation of sales as regards the parties to the suit and the purchaser. Objection to the confirmation of the sale is made cognizable by the Revenue Court, and there is nothing in the order to enable the purchaser to question the sale by an application to the Civil Court. The proceedings of the Revenue Court adopted in selling this land, in pursuance of Notification No. 671 of 1880, dated the 30th August, cannot be questioned in this miscellaneous proceeding, when there is no provision allowing the purchaser to make an application of this kind."

The purchaser appealed to the High Court, contending that the lower Court had improperly refused to entertain the application.

Mr. *G. E. A. Ross* and *Babu Ratan Chand*, for the appellant.

Pandit Sundar Lal, for the respondent.

EDGE, C.J.—In this case a decree, ordering the sale of certain immoveable property, had been transferred to the Collector, who, in accordance with the direction, sold. The purchaser alleges that it was after such sale he discovered that the judgment-debtor had no saleable interest in the property sold by the Collector. Thereupon he applied to the Judge to set aside the sale under, I presume, s. 313, Civil Procedure Code.

The learned Judge was of opinion that, inasmuch as the sale had been transferred to the Collector, he had no jurisdiction in the matter, and declined to entertain the application, from which order an appeal has been preferred before us. The only question before us is, had the Judge jurisdiction to entertain the application made to him? It is contended by *Pandit Sundar Lal* that when once execution of a decree has been transferred to the Collector, the Civil Courts thenceforth become divested of all jurisdiction, and the only thing they can do is to see to the application of the money, the proceeds of such sale, on its being handed over by the Collector, and has relied on *Madho Prasad v. Hansa Kuar* (1), as an authority for that proposition. Now, assuming that the execution of the decree had never been transferred to the Collector, let us for a moment consider what is the reason for the introduction of s. 313 into the Code of Civil Procedure.

(1) I. L. R., 5 All. 314.

It was introduced in order that a speedy, quick, and inexpensive remedy might be provided by which a purchaser could get out of his difficulty in cases in which he, buying property at a sale under a decree, found that the judgment-debtor had no saleable interest in the property. For certain reasons it was decided that certain of these sales should be transferred to the management of Collectors; and accordingly s. 320 was introduced into the Code, and the Local Government had thereunder power to declare by notification that the execution of certain kinds of decrees should be transferred to the Collector. But there is nothing to show that the Local Government had power to make any rule enabling the Collector to deal with questions of title. I can well understand why such a power should not have been delegated to the Collector. Questions of title are sometimes the most difficult ones to deal with, and they should be left in the hands of the constituted Courts of this country. Further, the Notification by the Local Government, No. 671, dated the 30th August, 1880, specially provides that the Collector shall not before sale exercise any jurisdiction whatever on an objection raised to the sale. If any question of sale arises, it may be brought before the Court which made the decree, and that Court may deal with it. It can also be brought before the Collector, but with the only result that he must send it on for disposal to the Civil Courts. It is obvious that it was never intended by the framers of the Notification of 1880, or of the Civil Procedure Code, that the Collector should have jurisdiction to deal with matters relating to title. Let us consider whether, according to the wording of these sections of the Code, the Civil Courts have not power to entertain applications such as this one in the present case. In s. 313, Civil Procedure Code, it is provided that the purchaser at "any such sale" may apply to the Court. "Any such sale" must refer to a sale under Chapter XIX, s. 311. Consequently, if this is a sale under Chapter XIX, and there is no express provision taking away the power of the Civil Courts to deal with it, it follows that jurisdiction still remains with us. That it is a sale under Chapter XIX is admitted by Pandit *Sundar Lal*. It is a sale in pursuance of a decree. It is a sale which has its very existence by reason of the provisions of Chapter XIX of the Civil Procedure Code. I have therefore no hesitation in saying

1886

NATHU MAL
v.
LACHMI
NARAIN.

1886

NATHU MAL
v
LACHEMI
NARAIN.

that this case comes within s. 313, and that the Civil Courts had jurisdiction to entertain the application.

The appeal will therefore be allowed with costs, and the Judge below is directed to hear the application on its merits.

OLDFIELD, J.—I concur.

Appeal allowed.

1886

October 21.

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

GULZARI LAL (PLAINTIFF) v. DAYA RAM AND ANOTHERS (DEFENDANTS).*

Execution of decree—Transfer of decree—Civil Procedure Code, ss. 232, 244—Appeal—Act III of 1877 (Registration Act), s. 28.

THE words of s. 28 of the Registration Act (III of 1877), "some portion of the property" should not be read as meaning some *substantial* portion. *Sheo Dayal Mal v. Hari Ram* (1) dissented from.

The holders of a decree for the sale of mortgaged property transferred the same to *M* by instruments which were registered at a place where a small portion only of the property was situate. Subsequently *M* transferred the decree to other persons, and the co-transferees applied under s. 232 of the Civil Procedure Code to have their names substituted for those of the original decree-holders. The judgment-debtor opposed the application on the grounds that *M's* name had not been substituted for the names of the original decree-holders who had transferred to him, and that the transfers to *M* were inoperative, as the instruments of transfer had not been registered at the place where the substantial portion of the mortgaged property was situate, in accordance with s. 28 of the Registration Act (III of 1877). It appeared that no notice had been issued to *M*, under s. 232 of the Civil Procedure Code, that he was dead, and that his legal representatives had not been cited as required by law. The application was allowed by the Courts below.

Held that the matter involved questions arising between the parties to the decree or their representatives within the meaning of s. 244 (e) of the Code, and that the order allowing the application was therefore a decree within the definition of s. 2, and was appealable as such.

Held that, even assuming that the judgment-debtor had a *locus standi* to raise the objection that notice had not been issued to the applicants' transferor, he had no possible interest in the question, and could not be prejudiced by the passing of the order; that it was not necessary to cite the representatives of the transferor; and that the order not being one upon which execution of the decree could issue, but merely for a transfer of names, the objection that the transferor had not been cited under s. 232 was not a substantial one.

* Second Appeal No. 77 of 1886, from an order of G. Lang, Esq., District Judge of Bareilly, dated the 14th July, 1886, affirming an order of Maulvi Muhammad Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 1st May, 1886.