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between a stranger and a person who is in possession of that inheritance, having succeeded thereto with the consent and acquiescence of Surjomoni, the only person who would be entitled to maintain a construction of the will adverse to the present plaintiff's title. We think that a stranger has no right in this way to seek out a flaw in the plaintiff's title and impugn the validity of that title.

There is evidence in the case to show that Surjomoni has acquiesced in the plaintiff's title; she acted as his guardian in bringing the present suit; and at her instance the minor's name was registered under the Land Registration Act. According to a possible and probable construction, the will has given the inheritance to the plaintiff, and we think that a stranger is not entitled to come in and say, that under another construction, not set up by the person who would benefit thereby, that person and not the plaintiff is the rightful owner.

We are, therefore, of opinion that this appeal must be dismissed with costs.

P. O'K.

*Appeal dismissed.*

*Before Mr. Justice Mitter and Mr. Justice Ghose.*

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JOGENDRO NATH SIRCAR (JUDGMENT-DEBTOR) v. GOBIND CHUNDER ADDI AND ANOTHER (DECREE-HOLDERS).<sup>o</sup>

*Civil Procedure Code, 1882, ss. 284, 295, 315—Execution of decree—Payment out of proceeds before confirmation of sale—Interest on decree from date of sale to date of confirmation.*

Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done.

The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained.

*Held*, that under the special circumstances of this case, the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed.

<sup>o</sup> Appeal from Order No. 133 of 1885, against the order of C. B. Garrett, Esq., Additional Judge of 24-Pergunnahs, dated the 26th of January 1885.

THIS was an appeal from an order dated 26th January 1885, passed by the Additional Judge of the 24-Pergunnahs, allowing a decree-holder to receive from his judgment-debtor interest on his judgment-debt from the date of the sale in execution to the date of the confirmation of the sale.

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It appeared that on the 12th August 1881 one Gobind Chunder Addi obtained a decree against Jogendro Nath Sircar for Rs. 33,473, with interest thereon at 6 per cent. till the date of payment. On the 9th January 1882 three properties belonging to the judgment-debtor were sold, one of these properties (lot No. 1) being bought by the decree-holder himself for Rs. 2,650, and the other two (lots Nos. 2 and 3) by one Monoranjun Dass for Rs. 30,650. On the 10th January a further property belonging to the judgment-debtor was advertized for sale, but the judgment-debtor paid into Court the balance due under the decree, and the sale was stayed. On the 23rd January 1882 Monoranjun presented a petition to the Court complaining of certain irregularities in connection with the sale, and intimated that he was about to apply to have the sale set aside on the ground that the judgment-debtor had no saleable interest in the property; in this petition (of the 23rd January) he prayed that he might be allowed to deposit the balance of his purchase money in Government securities, and that the sale proceeds should not be paid out until the date on which the sale might be confirmed. The decree-holder assented to this arrangement, but it nowhere appeared that the judgment-debtor was present at or had notice of the application. On the 9th February 1882 the decree-holder applied for the confirmation of the sale of the property purchased by himself, and drew out the sum of Rs. 2,650, the proceeds of sale of the property purchased by himself. At that time no similar application was made for the confirmation of the sale of the other two properties (lots Nos. 2 and 3), nor was any application made to withdraw the sale proceeds thereof. On the 8th March 1882 Monoranjun applied to have the sale set aside, and obtained an order appointing a Receiver to take charge of the property till the final order of the Court. On the 4th August 1882 the sale of the other two properties (lots 2 and 3), was confirmed, and on the 8th August a rule was issued calling upon Monoranjun to show cause why the

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Government Promissory Notes deposited by him should not be sold, and the proceeds paid over to the decree-holder. But on the 18th August, on the application of Monoranjun, the Court ordered that the money should not be paid over until after the expiry of two weeks from that date. On the 21st August Monoranjun applied to the High Court to have the order of the 4th August set aside, and on the 11th September 1882 the High Court made a further order staying payment. Subsequently the High Court set aside the order of the 4th August 1882 and sent the case back for retrial; and on the 21st March 1883 the Court made an order confirming the sale, which order was confirmed on appeal to the High Court on the 14th December 1884, the Court further directing that the purchaser should pay to the decree-holder interest upon the amount of the decree from the 21st March 1883, the date of the confirmation of sale, to the date of payment of the purchase money.

The decree-holder thereupon again applied to execute his decree in order to realize from the judgment-debtor interest upon his decretal money from the 9th January 1882, the date when the sale was held, to the 21st March 1883, when the sale was confirmed; and on the 26th January 1885 the Additional Judge on this application held that the decree-holder was entitled to the interest claimed, because under the terms of s. 316 of the Civil Procedure Code the title of the purchaser dated from the date when the sale was confirmed, the judgment-debtor being entitled to the proceeds of the property up to that date.

The judgment-debtor appealed against this order to the High Court, making both the decree-holder and the auction-purchaser respondents.

Baboo *Umbica Churn Bose*, and Baboo *Jadub Chunder Seal*, for the appellant, contended that the decree-holder not having applied to take the sale proceeds out of Court, it would be inequitable to make the judgment-debtor liable for the interest, and the more so as it was by the acts and objections of the auction-purchaser that the purchase money was detained in Court.

Baboo *Bhowani Churan Dutt*, for the respondents.

The Court (MITTER and GHOSE, JJ.) after stating the facts set out above, delivered the following judgment:—

The ground upon which the Additional Judge has decided this case implies that, until the date of the confirmation of sale, the judgment-creditor was not entitled to take out the sale proceeds of the properties sold in execution. We are of opinion that this view of the law is not strictly correct. It does not necessarily follow that, because the title of the execution purchaser dates from the date of the confirmation of sale, and the judgment-debtor continues to receive the profits of the property sold up to that date, the judgment-creditor is not entitled to draw out from Court the money realized by the sale. This view of the Additional Judge is negatived by the provisions of s. 315 of the Code of Civil Procedure which says: "When a sale of immoveable property is set aside under s. 312 or 313, or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, and the purchaser is for that reason deprived of it, the purchaser shall be entitled to receive back his purchase money (with or without interest as the Court may direct) from any person to whom the purchase money has been paid." This provision clearly implies that the purchase money may be paid to the decree-holder before the date of the confirmation of sale. Although there is no express provision in the Code of Civil Procedure upon this point, yet ss. 284 and 295 indicate that the view taken by the District Judge is not correct. The Bombay High Court in *Vishwanath Maheshvar v. Virchand Panachand* (1) has held that a decree-holder may take out the purchase money before the date of the confirmation of sale. Although a decree-holder may take out the purchase money before the date of confirmation of sale, still we do not mean to hold that the Court holding the sale has no discretion in refusing to pay to the decree-holder the purchase money of the property sold before the date of confirmation of sale. There may be cases in which it would be necessary for the protection of the interests of the purchaser to detain the purchase money until the confirmation of sale, and the Court may, under special circumstances, refuse to pay over to the decree-holder the

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purchase money until the sale is confirmed, but in such cases the Court should provide for the due payment of the interest of the money so detained. We are, therefore, of opinion that the ground upon which the Additional Judge's decision is based in this case is not correct.

We have then to determine for ourselves whether, under the special circumstances of this case, the order of the Additional Judge is sustainable. We are of opinion that it is not, upon the following grounds:—

First, we think that after the first three lots were sold on the 9th January 1882, and when the officer conducting the sale was proceeding with the sale of lot No. 4 on the next day, that is on the 10th January, the judgment-debtor, having paid the balance of the decree, the sale of lot No. 4 and the remaining three lots was stopped under s. 291 of the Code of Civil Procedure; this had the effect of virtually satisfying the entire decree.

Secondly, there having been no application under s. 311 to set aside the sale within thirty days from the date of sale, the Court was bound to confirm it under s. 312. Although the decree-holder applied to the Court on the 9th February 1882 to confirm the sale of lot No. 1 which he himself had purchased, he did not make any such application regarding the other two lots which were purchased by Monoranjun Dass. Neither did he make any application for obtaining the sale proceeds realized in execution of his decree.

Thirdly, that on the 23rd January 1882, the purchaser of lots Nos. 2 and 3, *viz.*, Monoranjun Dass, having applied to the Court to be allowed to deposit the balance of the purchase money in Government Promissory Notes upon the condition that the said Notes were to be detained in Court until the result of the application which he was going to make for the reversal of the sale under s. 313 was known, the order prayed for having been made on the consent of the pleader of the decree-holder, but without any notice to the judgment-debtors, the decree-holder under these circumstances is not entitled to claim any interest on the money so kept in deposit from the judgment-debtors.

Fourthly, as it was quite open to the decree-holder, on the expiration of thirty days from the date of sale, to apply to the

Court for the confirmation of the sale of lots Nos. 2 and 3, and to apply for the payment to him of the sale proceeds, and as he did not move the Court for that purpose, he is not in our opinion entitled to any interest from the date of sale until the date when by an order of Court the money was directed to be detained until the disposal of the auction-purchaser's application to set aside the sale. The decree-holder, therefore, is not entitled to claim any interest from the date of sale to the 4th of August 1882.

Then as regards the period subsequent to that date it is true that the money was detained by an order of this Court, a rule having been issued to that effect, but that the rule was disposed of on the 14th December 1884, along with the appeal preferred by the auction-purchaser. It was under the circumstances incumbent upon the decree-holder on that occasion to move this Court regarding the liability of the judgment-debtor to pay interest on the money in deposit in Court during the period which elapsed between the 9th January 1882 and the date of the stop order made by this Court. The order of this Court disposing of the rule provides for interest from the 21st March 1883, the date on which Mr. Macpherson confirmed the sale of lots Nos. 2 and 3 to date of payment of the purchase money, but no provision was made in that order for the period between the 9th January 1882 and the 21st March 1883. Either the decree-holder did not ask the Court to make any order respecting this period, or he did ask, but his prayer was not granted by this Court. In either case he would be precluded from making a fresh application for the realization of the interest for that period.

Upon these grounds, we are of opinion that the decision of the Additional Judge is erroneous. We accordingly set it aside with costs.

T. A. P.

*Appeal allowed.*

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