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a suit in which a proper court-fee has been paid, and dispose of it according to law. Costs here and hitherto to abide the result.

Cause remanded.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, and Mr. Justice Mahmood.

KESHABDEO (PETITIONER) v. RADHE PRASAD (OPPOSITE PARTY).

Execution of decree—Civil Procedure Code, ss. 311, 313, 320, 322B, 322C, 322D—Transfer of execution to Collector—Application to Civil Court to set aside sale held by Collector on the ground of irregularity.

Held by the Full Bench that an application to set aside, on the ground of material irregularity within the meaning of s. 311 of the Civil Procedure Code, a sale held by the Collector in execution of a decree transferred to him for execution under s. 320, cannot be entertained by a Civil Court. *Madho Prasad v. Hansa Kuar* (1) followed. *Nathu Mal v. Lachmi Narain* (2) distinguished.

Per EDGE, C.J.—The intention of the Legislature as expressed in s. 320 and the following sections of the Civil Procedure Code was not to allow any delegation to the Collector of power to adjudicate upon questions of title, but, in other matters, to hand over all the proceedings to the Collector, and to withdraw the matters so handed over from the purview of the Civil Courts to that extent, but not questions of title or the other questions, if in dispute, referred to in ss. 322B, 322C, or 322D.

THIS was a reference to the Full Bench of an appeal which originally came for hearing before Brodhurst and Mahmood, J.J. The facts are sufficiently stated in the judgments of Edge, C. J., and Straight, J.

Pandit *Sundar Lal*, for the appellant.

Munshi *Kashi Prasad*, for the respondent.

EDGE, C. J.—In this case the respondent in the appeal before us obtained a money-decree against the appellant. The decree was transferred to the Collector for execution under the rules framed by the local Government under s. 320 of the Code of Civil Procedure. After the sale by the Collector, the judgment-debtor (appellant) applied to the Munsif to set aside the sale, on the ground of there having been irregularity in the conduct of the sale. The Munsif dismissed the application on the ground that he had no jurisdiction.

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

(2) I. L. R., 9 All., 43.

I assume for the purposes of this judgment, but not otherwise, that the irregularity complained of was an irregularity within the meaning of s. 311 of the Code of Civil Procedure. The judgment-debtor from the order of the Munsif brought this appeal. I have not the slightest doubt that the case is governed by the decision of the Full Bench of this Court in *Mudho Prasad v. Honsa Kuar* (1). The case has come up from the Division Bench to the Full Bench, it having been contended that the judgment delivered by me and concurred in by Mr. Justice Oldfield in *Nathu Mal v. Lachmi Narain* (2) decided in contravention of the decision of the Full Bench that an application of this kind lay to the Civil Court. The case of *Nathu Mal v. Lachmi Narain* (2) was a case in which the Collector in executing a decree transferred to him, had sold the property, and the purchaser had come to the Civil Court to set aside the sale under s. 313, on the ground that there was no saleable interest of the judgment-debtor in the property sold. In that case, for the reasons which I therein gave, I came to the conclusion that the application was properly made in the Civil Court and was entertainable by the Civil Court. I do not see that that decision, in any way, contravenes the judgment of the Full Bench to which I have referred. In the Full Bench case the question before the Court was whether an application to set aside a sale on the ground of irregularity, when the sale had been conducted by the Collector, would, under ss. 311 and 312, lie to the Civil Court or would lie to the Collector. When I say so, I thoroughly agree with the view of the Full Bench that the object of transferring the execution of that class of decrees which fall within s. 320 of the Code to the Collector is to give him, speaking generally, a free hand to deal with the property in the best interests of the parties concerned. In the Full Bench case the point in *Nathu Mal v. Lachmi Narain* (2) was not before the Court, and the question did not arise in the case that there might be a distinction between the power of the Collector in the carrying out of a decree transferred to him subject to the limits imposed upon him by the Code itself, and a power to decide upon a question of title or a question as to whether the decree should be executed at all. As I

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take it, the Collector, when a decree is transferred to him, is bound to carry out the decree subject to the discretion given to him by s. 321 and the following sections and subject to the provisions contained in ss. 322B, 322C and 322D. But I find in those sections no power given to the Collector and nothing which would suggest the giving of a power to the Collector to decide that the property which was directed by the decree to be sold was not the property of the judgment-debtor mentioned in the decree. When such a question arises before a sale, s. 322B shows that it is for the Civil Court and not for the Collector to decide it. The Civil Court under s. 313, which passed its own decree, it appears to me would be the tribunal to say what shall take place when property directed by it to be sold has been sold, and it subsequently appears that it was not the property of the judgment-debtor. If the Collector exercised the powers undoubtedly given to the Civil Court under s. 313 in cases of sales conducted by the Civil Court, the Collector would, if he set the sale aside, on the ground that the judgment-debtor had no saleable interest in the property which he was directed to sell, have, in fact, declined to carry out the decree of the Civil Court and would have decided on a question of title which, if it had arisen before the sale, he was bound to refer to the Civil Court. Then what is he to do? If he set aside the sale on the ground that the judgment-debtor had no interest in the property which was directed by the decree of the Civil Court to be sold, is the Collector to re-sell the property to some one else when no better title can be made, or is he to decline to give any effect to the decree? In the latter event he would be absolutely interfering with the decree of the Civil Court. Now the sections of the Civil Procedure Code from 321 forwards undoubtedly give the Collector, subject to ss. 322B, 322C and 322D, a discretion as to what he may do where a decree is transferred to him for execution, but there is nothing in those sections to suggest that the Collector need do nothing to give effect to the decree. So far as I am aware, there have been no regulations framed by the local Government which would give the Collector power to set aside a sale on the ground that there was no title. I do not think that what was the intention of the Legislature when a statute was passed can be

gathered from subsequent legislation, unless by the subsequent legislation that intention is specifically declared. Nevertheless I may observe that s. 30 of the Civil Procedure Code Amendment Act (VII of 1888), although it authorises expressly rules to be made under s. 320 giving the Collector power to exercise the powers of a Civil Court under s. 312, makes no suggestion that any rules may be framed giving him power to decide questions arising under s. 313, namely, to decide whether the judgment-debtor had or had not title in the property sold. It appears to me that the two classes of cases are totally distinct; that it was not the intention of the Legislature to allow any delegation to the Collector of a power to adjudicate upon title; but that it was the intention of the Legislature in other matters to hand over all the proceedings to the Collector and to withdraw those matters so handed over from the purview of the Civil Court to that extent, but not questions of title or the other questions, if in dispute, referred to in ss. 322B, 322C 322D, if they arose. I have expressed these opinions, because I wish it to be understood that I do not question in any way and did not intend, in the case of *Nathu Mal v. Lachmi Narain* (1), to question the authority or propriety of the decision of the Full Bench in the case of *Madho Prasad v. Hansa Kuar* (2). Agreeing as I do with the decision of the Full Bench in that case, I must still say that in my opinion the two cases are totally dissimilar and different principles must be applied to them. I am of opinion that the judgment of the Full Bench governs this case, and that the appeal should be dismissed with costs.

STRAIGHT, J.—This is an appeal from an order of the Munsif, dated the 23rd July, 1887, by which order he rejected an application made to him by a judgment-debtor to set aside a sale which had been held by a Collector in execution of a Civil Court decree transferred to him under the provisions of s. 320 of the Civil Procedure Code. The ground upon which avoidance of the sale was sought was that there had been an irregularity of the kind mentioned in s. 311 of the Civil Procedure Code. The Munsif held that the decree in execution of which the sale had taken place having been

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transferred by him under s. 320, he had no jurisdiction to entertain the application. It is this decision of his which was the subject-matter of the appeal before my brothers Brodhurst and Mahmood, which by their order has been referred to the Full Bench for disposal. The ground of the reference mainly was that according to the opinion of those two learned Judges it was difficult to reconcile the Full Bench ruling of this Court, which is to be found at page 314 of I. L. R., 5, All., and a decision of the learned Chief Justice and Mr. Justice Oldfield which is to be found at page 43 of I. L. R., 9, All. The course that the discussion has taken and the suggestions that have been thrown out during the argument render it, in my opinion, unnecessary for us to consider whether the view expressed by the learned Chief Justice in the ruling referred to was a correct one or not, or in other words, whether the learned Chief Justice was correct in the view that he took with regard to s. 313 of the Civil Procedure Code. It is enough for the purposes of this case to say that we have not s. 313 before us; if we had, I am not at all prepared to say that there is not great force in the view expressed by the learned Chief Justice in the ruling referred to, and what has been said by him to-day, as to the distinction that is to be drawn between the exceptional class of cases falling under s. 313 and those more directly concerned with proceedings in direct execution of a decree. In passing I may, however, say that under the rules which have been framed by the local Government in accordance with the provisions of s. 320, dated the 20th November, 1880, there is no reproduction of the provisions of s. 313, although in all other particulars they have reproduced, for the purpose of guiding the Collector in execution of decrees transferred to him, the provisions of the Civil Procedure Code. It is also noticeable that, in clause 12 of s. 17 of those rules, where reference is made to the setting aside of a sale, the Rules say that in the event of the sale being set aside, the Collector may order the refund of the "fee", and this seems to be all the Collector has power to refund. Under the Civil Procedure Code, however, upon the setting aside of a sale, the Civil Court has power to order the refund of the purchase-money if it has been paid. The omission in the Rules to which I have pointed is possibly due to the

circumstance that it is into the Civil Court that the proceeds realized by the sale are to be paid. However, it is not necessary for me to determine whether, in cases under s. 313 of the Civil Procedure Code, I should follow the decision of the learned Chief Justice or should hold a different view. I think it right to say, having been a party to the Full Bench ruling in *Madho Prasad v. Hansa Kuar* (1), that what was intended to be laid down there and what was laid down is that where a decree has been transferred to a Collector for execution, his proceedings in execution were not to be governed by the provisions of the Civil Procedure Code, but they were to be governed and were governed by the rules which were made in that behalf by the local Government; and that considering the objects of those rules and the procedure of the Collector under those rules, s. 244 of the Civil Procedure Code did not apply, and there was no such appeal as there would be from the ordinary decision of the Civil Court in executing decrees under that section. This is what the Full Bench ruling laid down and that is all it laid down. I agree with the learned Chief Justice that it is a distinct authority for the proposition that when, in the execution of a decree transferred to a Collector for that purpose, an application has to be made to set aside a sale which the Collector has held, the application must be made to him and cannot be made to the Civil Court. This being so, I agree with the learned Chief Justice's order that the appeal must be and it is dismissed with costs.

MAHMOOD, J.—I have arrived at the same conclusion, and being one of the Judges who referred the case to the Full Bench, all I need say is that the Full Bench ruling of this Court in *Madho Prasad v. Hansa Kuar* (1) governs this case, and that I accept the distinction which the learned Chief Justice has drawn between the Full Bench ruling and his Lordship's own ruling in *Nathu Mal v. Lachmi Narain* (2). The exact point raised and decided in that case does not arise in this case. It can scarcely be doubted, and I say this advisedly after having had to deal with the transfer of decrees to the Collector under the provisions of s. 320 and the following sections, that the state of the law, even as represented in the statute,

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is full of complications and difficulties, and that any attempts that have been made to amend it have scarcely done enough to remove those doubts and difficulties. Instead of having proved a benefit to the judgment-debtor in whose interests those various sections were introduced in the Code of Civil Procedure, they have tended to increase litigation on the one hand, and to prevent the decree-holder from obtaining the fruits of his decree, on the other.

Appeal dismissed.

APPELLATE CIVIL.

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

BHAGWANT SINGH AND OTHERS (DEFENDANTS) v. KALLU (PLAINTIFF) *.

Act XXI of 1850—Suit by person born a Muhammadan as reversioner in a Hindu family.

Act XXI of 1850 does not apply only to a person who has himself or herself renounced his or her religion or been excluded from caste. The latter part of s. 1 protects any person from having any right of inheritance affected by reason of any person having renounced his religion or having been excluded from caste. This applies to a case where a person born a Muhammadan, his father having renounced the Hindu religion, claims by right of inheritance under the Hindu law a share in his father's family.

THIS was a suit brought by one Kallu Khan for possession of certain property which had been sold to the defendants by one Musammât Banno, since deceased. The grandfather of the plaintiff, Hari Singh, had three sons, Mohan Singh, Bacha Singh, and Mahipat Khan. Mahipat Khan, who was father of the plaintiff, was converted to Muhammadanism. The property in suit had belonged to Bacha Singh, second son of Hari Singh, and Banno, whose alienation of it was impugned, was Bacha Singh's widow. The plaintiff, who, as well as his father, was a Muhammadan, claimed the property by right of inheritance, under the Hindu law, to Bacha Singh. The

* Second Appeal No. 205 of 1887 from a decree of Maulvi Mirza Abid Ali Khan, Subordinate Judge of Sháhjahánpur, dated the 10th November, 1886, confirming a decree of Maulvi Muhammad Abdul Ghafur, Munsif of Tilhar, dated the 2nd September, 1886.