

## APPELLATE CIVIL.

1885  
March 21.*Before Mr. Justice Oldfield and Mr. Justice Mahmood.*RAMCHHAIBAR MISR (JUDGMENT-DEBTOR) v. BECHU BHAGAT AND  
ANOTHER (DECREE-HOLDERS).\**Execution of decree—Material irregularity in publishing or conducting sale—Objection that property sold was not legally saleable—Civil Procedure Code, ss. 244, 311, 312.*

An objection by a judgment-debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable, is not a matter which can be entertained by the Court under s. 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it. *Ram Gopal v. Khiali Ram* (1) and *Janki Singh v. Ablakh Singh* (2) distinguished.

*Per MAHMOOD, J.*—The scope of s. 244 of the Civil Procedure Code is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor, and covers all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution etc. of the decree. Questions that may arise after the sale are not, strictly speaking, questions relating to the execution, discharge, or satisfaction of the decree, within the meaning of cl. (3), s. 244; but, as soon as there has been a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree holder's decree.

Also *per MAHMOOD, J.*—The expression "conducting the sale" as used in s. 311 of the Civil Procedure Code, does not include any proceedings unconnected with the actual carrying out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale. *Olpherts v. Mahabir Pershad* (3) referred to.

The facts of this case are stated in the judgment of Oldfield, J.

The *Senior Government Pleader* (Lala Juala Prasad), for the appellant.

Munshi Sukh Ram, for the respondents.

OLDFIELD, J.—Bechu Bhagat, respondent, held a decree against Ramchhaibar Misr, of the 26th July, 1879, and attached and brought to sale the property in suit, which was purchased by Tilak Dhari, respondent. Ramchhaibar Misr, the judgment-debtor, preferred no objection to the attachment of the property, but, after the sale had taken place, he put in an application under s. 311 to set aside the sale on the ground of irregularity in pub-

\* First Appeal No. 146 of 1884, from an order of Munshi Kulwant Prasad, Munsif of Balia, dated the 9th August, 1884.

(1) I. L. R., 6 All. 448.

(2) I. L. R., 6 All. 293.

(3) L. R., 10 Ind. Ap. 25.

1885

RAMCHHAI-  
BAR MISR  
v.  
BROHU  
BHAGAT.

lishing and conducting it, and also on the further ground that the property was a right-of occupancy tenure and not saleable by law. All the objections were disallowed, and the sale was confirmed, and this appeal is from the order under s. 312 confirming the sale, and the ground taken before us in appeal for setting aside the sale is the last of the above-named objections, namely, that the property was not saleable. In my opinion this is not an objection of a nature which can be entertained by the Court under s. 311, Civil Procedure Code, so as to afford a ground for setting aside a sale. When a sale has taken place in execution of a decree, the law allows a judgment-debtor, or any person whose immoveable property has been sold, to apply to set aside the sale on the ground of a material irregularity in publishing or conducting it (s. 311), and, under s. 312, it becomes the duty of the Court to confirm the sale, as regards the parties to the suit and the purchaser, if no such application as is mentioned in s. 311 has been made, or if, having been made, the objection has been disallowed. Now the objection here taken is not of the nature contemplated in s. 311: it is an objection that the property attached and sold is not by law saleable: that is not an objection relating to material irregularity in publishing and conducting a sale to which s. 311 refers. It is an objection which the judgment-debtor might have taken at the time of attachment prior to the sale, but it is not one he can take after the sale under s. 311, so as to afford a ground under s. 312 for setting aside the sale. We cannot therefore hold that the order confirming the sale from which this appeal is preferred was an improper order, as it was the duty of the Court to confirm the sale, whereas in this case all objections which could properly be preferred under s. 311 have been disallowed.

We have been referred to the case of *Ram Gopal v. Khiali Ram* (1) but it contains nothing opposed to the view here taken. That was a suit brought by a judgment-debtor against his decree-holder and a purchaser to set aside a sale, on the ground that the property, being a right of occupancy tenure, was unsaleable, and all that was held was that, as against the decree-holder, the judgment-debtor's proper remedy was not by suit, but under s. 244, Civil Procedure Code, in the execution department, which is also

what I have indicated here, that is, before the sale has taken place, but not by application under s. 311 after the sale to set the sale aside.

In the same way there is nothing in the case of *Janki Singh v. Ablakh Singh* (1) which is opposed to the view I here take. On these grounds, and without going into the merits of the objection, I would dismiss the appeal with costs.

MAHMOOD, J.—I am of the same opinion. It appears to me that in construing and interpreting the law on this question, it is important to bear in mind the order in which the various sections which indicate the agitation or adjudication of points in discussion follow each other. The Code itself seems to me to be very clear. After having dealt with the rules for institution and frame of suits, their trial and modes of recording evidence, and the preparation of decrees, in the first eighteen chapters, chapter XIX deals with an entirely different class of procedure, namely, “the execution of decree.” This heading, which is general, is divided into many sub-divisions. Sub-division *A* points out the Court by which decrees may be executed; sub-division *B* deals with applications for execution; *C* relates to stay of execution; and sub-division *D* deals with questions for the Court executing decrees. The whole of this last sub-division consists of one section, 244, and I here wish to express my views with regard to the clause. I think the scope of this section is limited to matters connected with the execution of the decree between the decree-holder and the judgment-debtor. In this light, cl. (e), which has been in some cases interpreted in a broader sense than we have done in this case, relates to disputes arising between the decree-holder and judgment-debtor strictly. Now, sub-division *E* deals with the mode of executing decrees. This sub-division ends with s. 265, where sub-division *F* begins, which relates to attachment of property. We then come to another part of the same chapter, namely sub-division *G*, which regulates the sale and delivery of property in execution. This sub-division is further sub-divided into smaller sub-divisions, thus:— (a) is on the general rules as to sales; (b) gives the rules as to the sale of moveable property, and (c) gives the rules as to the sale of immoveable property. It is with this last sub-division (c) that we are especially concerned, because it is

(1) I. L. R., 6 All. 393.

1885

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RAMCHAND-  
BAR MISR  
v.  
BACHU  
BHAGAT.

1885

RAMCHHAI-  
BAR MISR  
v.  
BECHU  
BHAGAT.

in this part of the Code that ss. 311 and 312 occur, and the position which the sub-division (c) occupies in the Code is to be specially borne in mind. It is not necessary to deal further with the order in which the sub-divisions are arranged. I now deal with ss. 244, 311, and 312, which are the important sections in the case. I take it, that when execution of a decree is prayed for by a decree-holder, all the questions which may arise between the decree-holder and the judgment-debtor relating to the execution, &c., of the decree, may be disposed of under s. 244. There may be questions relating to the validity of attachment, the mode of execution, &c., but when one and all of these matters do terminate in a sale, I maintain that all that is comprehended within the definition of "execution" comes to an end there, because the purchaser comes as a third party, and is not bound by s. 244 as to proceedings antecedent to sale. The "execution" so far as s. 241 is concerned, is over, and the questions that may arise *after the sale* are no more, strictly speaking, questions relating to the execution, discharge or satisfaction of the decree within the meaning of cl. (c), s. 244. As soon as there is a sale, the execution of the decree, so far as the decree-holder is concerned, is over, and the question whether the purchaser has purchased anything by the sale is not a question as to the execution of the decree-holder's decree. In a recent case I have expressed the view that, under certain conditions, a judgment-debtor may bring a suit to set aside a sale, and, when those conditions exist, there is nothing in s. 244 to bar such suit, even though the plaintiff be a judgment-debtor. Two rulings have been cited before us on behalf of the appellant. The first is *Ram Gopal v. Khiali Ram* (1). To this ruling my brother Oldfield was a party. For the reasons given by my brother Oldfield, this ruling is distinguishable from the present case. The other ruling cited is *Janki Singh v. Ablakh Singh* (2). So far as the report goes, the ruling is opposed to the view taken by us, and I am not disposed to agree in that ruling, which, however, in some respects, is distinguishable from this case. The real question here is, whether the scope of s. 311 can be regarded as allowing the judgment-debtor, after the sale has actually taken place, to agitate the question of the non-saleability

(1) I. L. R., 6 All. 448. (2) I. L. R., 6 All. 393.

1885

RAMCHHAI-  
BAR MISR  
".  
BECHU  
BIAGAT.

of the rights which were attached, proclaimed for sale, and actually sold. The learned pleader for the appellant has argued that the words "*in conducting the sale,*" as they occur in the section, include all matters antecedent to the sale which would render the sale valid. I cannot accept this condition. If such a principle could be accepted, questions as to the validity of the decree, or to the jurisdiction of the Court by whom the decree was passed, might be re-opened by an application under s. 311. It is against the policy of the Legislature that such questions should be re-opened at such a late stage. Now, I take it that the word "*conducting,*" as used in s. 311, does not include any proceedings unconnected with the actual carrying out of the sale. The word has been used in s. 286, which runs as follows :—"Sales in execution of decrees shall be *conducted* by an officer of the Court, or by any other person whom the Court may appoint." This section occurs in sub-division *G* ("*of sale and delivery of property*"), in which sub-division s. 311 also occurs.

Now, reading the word "*conducting*" as it occurs in s. 311, together with the word "*conducted*" in s. 286, it is clear that this word refers only to the action of the officer who makes the sale. Anything done antecedent to the order of sale has nothing to do with "*conducting*" the sale. The learned pleader again contended that "*publishing*" a non-saleable thing as saleable is an irregularity in "*publishing*" the sale within the meaning of s. 311 of the Code. With this contention again I cannot agree, and I hold that the matter now agitated does not fall under s. 311, and the order passed under s. 312 cannot be impugned in this manner. It follows that the suit to set aside this order would not be barred under s. 244 of the Code or s. 312, because, in order to set aside an execution-sale under s. 311, there must have been an irregularity in conducting or publishing it. The exact point now raised before us was not raised in the case of *Olpherts v. Mahabir Pershad Singh* (1), but the whole judgment of their Lordships of the Privy Council proceeds upon a reasoning consistent with that which we have adopted in arriving at our conclusion in this case.

I would dismiss this appeal with costs.

*Appeal dismissed.*