

## CIVIL REVISIONAL.

1884  
December 15.*Before Mr. Justice Brodhurst and Mr. Justice Mahmood.*

SUNDAR DAS (PURCHASER) v. MANSA RAM AND OTHERS (JUDGMENT-DEBTORS).\*

*Execution of decree—Civil Procedure Code, s. 320—Transfer of decree to Collector for execution—Jurisdiction—Rules made by Local Government—Civil Procedure Code, s. 622—High Court's powers of revision.*

A decree passed by a Subordinate Judge upon a bond, in which certain immoveable property was mortgaged, was, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, transferred to the Collector for execution. A sale in execution took place, and the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree.

*Held* that, with reference to the second paragraph of Rule 19 of the Rules framed by the Local Government under s. 320 of the Civil Procedure Code regarding the transmission, execution, and re-transmission of decrees, and published in the *N.-W. P. and Oudh Gazette* of the 4th September, 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of s. 320, and notwithstanding the ruling of the Full Bench in *Madho Prasad v. Hansa Kuar* (1).

*Held* also that, inasmuch as the Subordinate Judge had jurisdiction to decide the question, and inasmuch as, even if his decision were wrong, the purchaser had a remedy by bringing a regular suit, the matter did not fall within s. 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision. *Shivanathaji v. Jomā Kashinath* (2) and *Amir Hasan Khan v. Sheo Baksh Singh* (3) referred to.

THIS was an application for revision under s. 622 of the Civil Procedure Code of an order passed by the Subordinate Judge of Benares, and dated the 1st March, 1884, under the following circumstances:—It appeared that a mauza called Sabahipur, together with six smaller villages, formed a single taluqua which was called by the name of the principal village Sabahipur, and the whole taluqua was assessed with the revenue payable to Government, and

\* Application No. 111 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 1st March, 1884.

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

(3) I. L. R., 11 Calc., 6.

(2) I. L. R., 7 Bom., 341.

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amounting to Rs. 203. At the settlement, all papers connected with the settlement record were separately prepared, and the papers of each village formed a separate book. All the villages belonged to the same persons, who were judgment-debtors under a decree passed by the Subordinate Judge upon a bond executed by them in favour of one Murari Das, in which Mauza Sabahipur was mortgaged as bearing the revenue payable in respect of the whole taluqua. In the plaint in that case, the mortgage was sought to be enforced against Mauza Sabahipur only, and the decree apparently did not affect any other village. An application for execution of the decree was made to the Subordinate Judge by the decree-holder, in which no reference was made to any of the other six villages, and only Sabahipur was attached in execution. The decree was transferred by the Subordinate Judge, in accordance with the rules made by the Local Government under s. 320 of the Civil Procedure Code, to the Collector for execution. A sale then took place, and the Collector gave the purchaser a certificate of sale in which the sale of Mauza Sabahipur only was certified. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of the entire taluqua, and, upon the refusal of the Court to do so, applied to the Collector to amend the certificate of sale so as to include the other six villages. The Collector having amended it as desired, the decree-holder again applied to the Subordinate Judge for possession of the taluqua, and the Subordinate Judge again rejected the application, holding that only Mauza Sabahipur had been sold in execution of the decree.

The purchaser now applied to the High Court to revise the Subordinate Judge's order on the following grounds:—

- (i) That the Subordinate Judge had no jurisdiction to pass any order on the case, it having been transferred to the Collector.
- (ii) That in disposing of the application of the purchaser for possession of the property, the lower Court ought not to have gone behind the sale-certificate to determine what property had actually been sold.
- (iii) That all proceedings connected with the sale showed that the whole taluqua had been sold.

Mr. *T. Conlan*, Mr. *N. L. Paliologus*, and Pandit *Ajudhia Nath*,  
for the petitioner.

*Lala Lalta Prasad* and *Munshi Kashi Prasad*, for the judgment-  
debtors.

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The pleaders for the judgment-debtors were not called on.

MAHMOOD, J.—Mr. Conlan has argued that we are bound by the ruling of this Court in *Madho Prasad v. Hansa Kuar* (1) to revise the order of the Subordinate Judge in this case, on the ground that he had no jurisdiction to alter the sale-certificate, or to dispute the entries contained therein as to the amount of property sold. We have considered this argument, but we are of opinion that, with reference to the second paragraph of Rule 19 of the Rules framed by the Local Government under s. 320 of the Civil Procedure Code, regarding the transmission, execution, and re-transmission of decrees, and published in the *N.-W. P. and Oudh Gazette* of the 4th September, 1880, the matter of delivery to the purchaser was within the jurisdiction of the Subordinate Judge, notwithstanding the terms of s. 320, and notwithstanding the Full Bench ruling to which Mr. Conlan has referred. It may be (though as to this I express no opinion) that the Subordinate Judge's order of the 1st March, 1884, was erroneous upon the merits. But we hold that he had jurisdiction to pass the order, and even if his order was erroneous, the matter does not fall within s. 622 of the Civil Procedure Code, so as to call for the interference of this Court in revision. Any other view would lead to the conclusion that s. 622 virtually gives a right of appeal in cases where the Legislature distinctly intended the decision to be final. This I regard as erroneous. I agree in the principles laid down by West, J., in the Bombay Full Bench case of *Shivanathaji v. Joma Kashinath* (2) in which the other Judges of the Bombay High Court concurred, and in particular with the following observations reported at p. 372 :—“Where a decree or order of a subordinate Court is declared by the law to be, for its own purposes, final or conclusive, though in its nature provisional, as subject to displacement by the decree in another more formal suit, the Court will have regard to the intention of the Legislature that promptness

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

(2) I. L. R., 7 Bom., 341.

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and certainty should, in such cases, be in some measure accepted, instead of juridical perfection. It will rectify the proceedings of the inferior Court where the extrinsic conditions of its legal activity have plainly been infringed; but where the alleged or apparent error consists in a misappreciation of evidence, or misconstruction of the law, intrinsic to the injury and decision, it will respect the intended finality, and will intervene peremptorily only when it is manifest that, by the ordinary and prescribed method, an adequate remedy, or the intended remedy cannot be had." In the present case, it is not contended that if the petitioner has really been aggrieved, he has no remedy by bringing a regular suit.

A similar view of s. 622 appears to have been taken by their Lordships of the Privy Council in the recent case of *Amir Hasan Khan v. Sheo Baksh Singh* (1). That was an appeal from a decision of the Judicial Commissioner of Oudh reversing the concurrent judgments of two lower Courts. By s. 21 of Act XIII of 1879 (the Oudh Civil Courts Act), such reversal was only possible by exercise of the powers conferred by s. 622 of the Civil Procedure Code. In allowing the appeal, their Lordships made the following observations:—"The question then is, did the Judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity? It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case, and, even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity."

This appears to me to settle the question. I have already said that the Subordinate Judge had jurisdiction to decide the present matter; and that, although he may have decided wrongly, the petitioner would not be deprived of his remedy by a regular suit. I am therefore of opinion that no sufficient ground for interference in revision has been established, and that consequently the application should be dismissed with costs.

BRODHURST, J., concurred.

*Application dismissed.*