

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

1885
February 4.

HUB LAL (JUDGMENT-DEBTOR) v. KANHIA LAL AND ANOTHER
(DECREE-HOLDERS)*

Execution of decree—Sale in execution—Confirmation of sale—Objection that property is not liable to attachment—Civil Procedure Code, ss. 278, 311, 312.

Held that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was invalid, was not an objection entertainable under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time in appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided.

THIS was an appeal from an order confirming a sale of immoveable property in execution of a decree. It appeared that the appellant had, after the passing of a decree for the payment of money, become surety for its performance, and it had been executed against him, and certain immoveable property belonging to him had been sold on the 20th December, 1883. He objected to the confirmation of the sale on the ground of certain irregularities in the publication and conduct of the sale. The lower Court (Munsif of Etah), by an order dated the 5th March, 1884, disallowed these objections, and confirmed the sale.

It was contended for the appellant that the sale, and the execution-proceedings generally, were void, as he had become liable as surety for the performance of the decree, after it had been made, and therefore the provisions of s. 253 of the Civil Procedure Code were not applicable, and the decree should not have been executed against him.

Babu Ram Das Chakarbatī, for the appellant.

Munshi Hanuman Prasad and the Senior Government Pleader (Lala Juala Prasad), for the respondents.

The Court (OLDFIELD and MAHMOOD, JJ.) delivered the following judgment:—

OLDFIELD, J. —This is an appeal from an order refusing to set aside a sale under s. 312 of the Civil Procedure Code. The first

First Appeal No. 37 of 1884, from an order of Shaikh Sakhawat Ali, Munsif of Etah, dated the 5th March, 1884.

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plea taken is, that the appellant was no party to the decree, and his property, which has been the subject of the sale, was not liable to be attached and sold, and therefore the sale is invalid.

This is not an objection which is entertainable under s. 311, which permits a sale to be set aside for material irregularity in publishing or conducting it, and is not a ground, therefore, for setting aside the sale under that section. We cannot therefore hold that the order refusing to set aside the sale is wrong by reason of this objection.

Moreover, it is now preferred for the first time, and, we may add, was an objection which the appellant might or should have taken under s. 278 at the time of attachment, and he would then have had his remedy as therein provided.

The other pleas fail, as no material irregularity such as the appellant refers to in those pleas has been established. The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Olffield and Mr. Justice Mahmood.

GOBARDHAN DAS (JUDGMENT-DEBTOR) v. GOPAL RAM AND OTHERS
(DECREE-HOLDERS).*

Execution of decree—The decree to be executed where there has been an appeal.

The effect of the decision of the Full Bench in *Shohrat Singh v. Bridgman* (1) is nothing more than that the last decree is to be regarded as the decree to be executed, whether it reverses, modifies or confirms; but when it affirms and adopts the mandatory part of the first Court's decree, that decree may be, and should be referred to, and the mandatory part of it so affirmed should be executed as though it were the decree of the appellate Court.

Kristo Kinkur Roy v. Rajah Burrodacaunt Roy (2) referred to.

Where the first Court of appeal affirmed the decree of the Court of first instance, and the High Court affirmed the decree of the lower appellate Court and dismissed the appeal, and the decree-holder made an application of which the object clearly was to have execution taken under the decree of the appellate Court, by carrying out the mandatory part of the decree of the Court of first instance, *held* that the objection that the decree-holder did not in his application expressly ask the Court to execute the decree of last instance, was under the circumstances a mere technical objection, and there was no reason why the execution asked for should not be allowed.

* Second Appeal No. 23 of 1884, from an order of A. F. Millet, Esq., District Judge of Sháhjahánpur, dated the 17th September, 1883, reversing an order of Munsif Saiyid Muhammad, Munsif of West Budaun, dated the 6th July, 1883.

(1) I. L. R., 4 All., 376. (2) 14 Moo. I. A., 465.

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February 6.