

stance that the plaintiff has joined them in the present litigation will not enable him to obviate the plea of *res judicata*.

As to the rest of the case, that is the other two bonds which were not the subject-matter of the former suit in the Munsif's Court, the answer is clear. I hold that those bonds did not in that suit constitute a "matter directly and substantially in issue," within the meaning of s. 13 of the Code, although they were discussed as a matter of evidence; and that even if they were "directly and substantially in issue," I should say that the finding of the Munsif would not support the plea of *res judicata*, because the Munsif was not a Court of jurisdiction competent to try the present suit in which the plea has been raised.

I am, therefore, of opinion that the present suit, so far as it relates to the two bonds which formed the subject of adjudication in the former suit, is barred by the rule of *res judicata*, and the rest of it is not so barred.

DUTHOIT, J., concurred in holding that the suit was *res judicata* only in respect of the bonds on which the former suit was brought.

Before Sir W. Comer Petheram, Kt., Chief Justice, Mr. Justice Oldfield, Mr. Justice Brodhurst, Mr. Justice Mahmood, and Mr. Justice Duthoit.

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TOTA RAM (DECREE-HOLDER) v. KHUB CHAND (PURCHASER).*

Execution of decree—Sale in execution—Order disallowing objections to sale—Order confirming sale—Appeal—Civil Procedure Code, ss. 311, 312, 313, 314, 588 (16).

Per PETHERAM, C. J., and OLDFIELD, BRODHURST, and DUTHOIT, JJ.—An order passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 has been disallowed, is appealable under art. (16) of s. 588.

Per MAHMOOD, J.—An application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order "refusing to set aside a sale of immoveable property" under the first paragraph of s. 312, and therefore appealable as falling under the purview of art. (16) of s. 588.

Lalman v. Rasse Lal (1) and Rajan Kuar v. Lalta Prasad (2) dissented from by MAHMOOD, J.

THIS was a reference to the Full Bench by Mahmood and Duthoit, JJ. It arose out of the following facts. A decree-holder,

* First Appeal No. 26 of 1884, from an order of Pandit Kashi Narain, Munsif of Etawah, dated the 18th December, 1883.

(1) Weekly Notes, 1882, p. 117. (2) Weekly Notes, 1883, p. 178

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in the execution of whose decree certain immoveable property had been sold, applied, on the 3rd October, 1883, to have the sale set aside. The main ground of this application was that one Khub Chand, having purchased the property in question from the judgment-debtor, had proposed to the decree-holder, on the day the execution-sale took place, to pay the amount of the decree, if he would remit Rs. 50; that the decree-holder consented to this arrangement, and upon this intending purchasers believed that a sale would not take place; that Khub Chand left the decree-holder on the pretence of bringing the money; but instead of doing so, went to the place of sale and purchased the property himself for a very inadequate price. The Court executing the decree (Munsif of Etawah), by an order dated the 18th December, 1883, rejected the application, and, by a subsequent order, dated the following day, 19th December, confirmed the sale.

The decree-holder appealed to the High Court from the order of the Munsif, dated the 18th December, 1883, rejecting his application to set aside the sale, making the judgment-debtor and Khub Chand, the purchaser at the sale, respondents to the appeal. The appeal came for hearing before Mahmood and Duthoit, JJ.

On behalf of the respondent Khub Chand a preliminary objection was taken, that the order of the 18th December, 1883, was not appealable, being the order by which the decree-holder's objections to the sale were disallowed, and not the order confirming the sale. The learned Judges, with reference to this objection, referred the following question to the Full Bench:—“Is or is not an order, passed under the first clause of s. 312 of the Code of Civil Procedure, disallowing an objection made under the provisions of s. 311 of the Code of Civil Procedure, appealable under art. (16) of s. 588 of the Code.”

Babu *Baroda Prasad*, for the respondent Khub Chand.—The order disallowing objections to a sale is not made appealable by the Code. [The Court amended the question referred in manner following:—“Is or is not an order, passed under the first clause of s. 312 of the Civil Procedure Code, after an objection made under the provisions of s. 311 of the Code of Civil Procedure has been disallowed, appealable under art (16) of s. 588 of the Code?”]

Lala *Lalta Prasad*, for the appellant.

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The following judgments were delivered by the Full Bench:—

TOTAL RANI

PETTERAM, C. J.—My answer to the question referred to us as amended is in the affirmative.

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OLDFIELD, BRODHURST, and DUTHOIT, JJ., concurred.

MAHMOOD, J.— I am of the same opinion as the learned Chief Justice; but as one of the Judges who referred the matter to the Full Bench, I wish to explain the reasons which led to the reference. S. 311 of the Civil Procedure Code provides for cases in which either “the decree-holder, or any person whose immoveable property has been sold” in execution of decree, may apply to the Court, raising objections to the sale, and praying that it may be set aside. S. 312 confers the power upon the Court either to reject the application, in which case the sale is confirmed, or to allow the objections, and to set aside the sale. Then comes s. 313, which provides for cases in which the purchaser is also entitled to pray for setting aside the sale, and the same section empowers the Court to grant or reject the application. S. 314 says that “no sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.”

Now, reading these sections together, it would seem that the most convenient course for the Court would be to dispose of all objections to the sale in one and the same proceeding, and to confirm the sale by the same order, if all the objections have been rejected. But the usual practice of the Courts in the mufassal is to take up the objections, whether they are raised by the decree-holder, the judgment-debtor, or the auction-purchaser, and to dispose of them separately, and afterwards to pass an order confirming the sale, if the objections have already been disallowed. There are two rulings of this Court—*Lalman v. Rassu Lal* (1)—and *Rajan Kuar v. Lalta Prasad* (2),—in which it has been held that an order disallowing objections to a sale was not an order under the first paragraph of s. 312, so as to make it appealable under cl. (16) of s. 588, Civil Procedure Code, and that the only order appealable was that which confirmed the sale, within the meaning of s. 312 of the Code. The accuracy of these two rulings was doubted by me

(1) Weekly Notes, 1882, p. 117. (2) Weekly Notes, 1883, p. 173.

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in the unreported case of *Baldeo Singh v. Azimunnissa Bibi* (First Appeal from Order No. 1 of 1884), which was disposed of on the 10th June last, but the exigencies of that case did not require my passing a dissident order.

In the present case the question arose because the appeal has been preferred, not from an order confirming the sale under s. 312, but from an order disallowing objections to the sale; so that if the two rulings of this Court to which I have referred were to be adopted, the appeal would not lie under cl. (16) of s. 588 of the Code. This was the reason why the question was referred to the Full Bench.

With due respect to the two rulings of this Court to which I have referred, I am unable to agree in the rule therein laid down. I am of opinion that an application made under s. 311 can be disposed of only under s. 312, and if the Court rejects the objection to the sale, the order must be regarded as an order "refusing to set aside a sale of immoveable property" under the first paragraph of s. 312, and therefore appealable as falling under the purview of cl. (16) of s. 588 of the Civil Procedure Code.

CIVIL REVISIONAL.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

GANGA PRASAD (PLAINTIFF) v. CHANDRAWATI AND ANOTHER (DEFENDANTS)*.

Assignment of rent of land—Suit by assignee against tenant—Jurisdiction—Civil and Revenue Courts—Act XII of 1881 (N.-W. P. Rent Act), s. 93 (d).

A suit by the person, to whom a landholder has assigned rents payable to him by tenants, for the recovery of the money so assigned, is a suit cognizable in the Civil Courts and not in the Revenue.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of the Civil Procedure Code. It appeared that the proprietors of an eight-anna share in a village called Puchar were indebted to the plaintiff in this suit in the sum of Rs. 500. By an instrument, dated the 8th April, 1881, executed by the debtors, they assigned to the plaintiff Rs. 109, the aggregate yearly amount of rent payable to them by certain tenants

* Application No. 237 of 1884, for revision, under s. 622 of the Civil Procedure Code of an order of G. R. C. Williams, Esq., Deputy Commissioner of Jhānsi, dated the 24th June, 1884.

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