

objection to mutation of names must be taken to have been a valid one. We dismiss this appeal with costs.

Appeal dismissed.

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AMANAT BIBI
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AJUDHIA.

REVISIONAL CIVIL.

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December 21.

Before Mr. Justice Knox and Mr. Justice Blair.

GHULAM SHABBIR (OBJECTOR) v. DWARKA PRASAD AND OTHERS
(OPPOSITE PARTIES).*

Civil Procedure Code, sections 287, 318, 319—Execution of decree—Executing Court delivering possession of property not specified in sale certificate—Revision—Practice.

In execution of a decree against several joint judgment-debtors certain immovable property was proclaimed for sale. The sale proclamation described the property as so many biswas and biswansis in certain villages amounting to a certain area. The judgment-debtors possessed property in those villages over and above that sought to be sold. The property as above described was sold and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holders purchased the property so sold and applied for possession thereof, but in their application they inserted a detail of the specific shares of property held by the several judgment-debtors over which they prayed for possession. The Court executing the decree went into the question of the specification of shares and ordered possession to be delivered over certain specific shares of the several judgment-debtors.

Held that, under the circumstances described above, the High Court would interfere in revision under section 622 of the Code of Civil Procedure, although it was possible that the matters complained of might be grounds for a separate suit. *Guise v. Jaisraj*, (1), *Gopal Das v. Alaf Khan* (2) and *Prosunno Kumar Sanyal v. Kali Das Sanyal*, (3), referred to.

THE facts of this case are fully stated in the judgment of the Court.

Munshi *Mulho Prasad* and Maulvi *Ghulam Mujtaba* for the appellants.

Babu *Jogindro Nath Chaudhri* and Babu *Devendro Nath Ohdedar* for the respondents.

KNOX and BLAIR, JJ.—On the 20th of June 1892, and 20th of August 1892, certain properties in mauza Bhadoli and in

Civil Revision No. 23 of 1895.

(1) I. L. R., 15 All., 405. (2) I. L. R., 11 All., 383.

(3) I. L. R., 19 Calc., 683.

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mauza Loharli were sold in execution of a decree. The decree-holders were Dwarka Prasad and others, and the judgment-debtors were Maulvi Ghulam Kambar and Ghulam Shabbir and others. The amount of the property sold was described as consisting of so many biswas, biswansis, &c., and it was purchased by the decree-holders. Beyond the description of biswas and biswansis and the area which those biswas and biswansis covered there was no specification of the property showing what particular shares of the several judgment-debtors were being sold by auction, and it is admitted that the judgment-debtors did possess property in those villages over and above the property sold by auction. Certificates of sale were granted which followed in terms the description of the property as published for sale. On the 26th of September 1893, the auction-purchasers applied to the Court for delivery of possession over the property purchased by them, and in this application they inserted, what had not been set out either in the sale proclamation or sale certificates, namely, the specific shares of property held by the several judgment-debtors over which they prayed for possession. On the very same day, and without notice to the judgment-debtors, an order was passed for delivery of possession as prayed for and possession was, as a fact, delivered on the 10th of October 1893, and the case struck off the file. No notice was taken, or, at any rate, no notice was recorded, of the fact that the decree-holders had in their application inserted something over and above what had been entered in the sale proclamation and sale certificates. On the 16th of November 1893, and again on the 12th of December 1893, the judgment-debtors, Gulzari Lal and others and Ghulam Shabbir, applied for a review of the order of the 26th of September 1893. On the 9th of March 1894 the Court set aside its previous orders and the judgment-debtors filed the objections they had to the possession prayed for by the decree-holders. On the 10th of March and the 19th of March 1894, respectively, the Subordinate Judge went into the prayer for possession and objections and passed an order, dated the 12th of May 1894, by which he directed that possession should be

delivered to the auction-purchasers over the shares held by the judgment-debtors in mauzas Bhadoli and Loharli, and specified at great length the particular shares of each particular judgment-debtor over which possession was to be delivered. It is from this order that the present application for revision has been filed.

The grounds taken are that the Judge had no jurisdiction to direct delivery of possession contrary to the terms of the sale certificates. There were several other objections set out, and they are more or less details of and flow out of the main objection, that in directing the delivery of possession as he did, the Subordinate Judge acted without jurisdiction or acted illegally in the exercise of jurisdiction.

Sections 318 and 319 of the Code of Civil Procedure are the sections which lay down what is the duty of the Court on receiving an application from a purchaser at one of its sales asking for delivery of possession over the property purchased. In neither section is there any reference made to the necessity for an inquiry of any kind. What those sections contemplate is that the Court shall proceed at once to deliver possession in accordance with and over the property specified in the sale certificate. By section 319 delivery is directed to be made by simply affixing a copy of the certificate of sale in some conspicuous part of the property and by proclaiming to the occupant of such property that the interests of the judgment-debtor have been transferred to the purchaser. It is moreover obvious that at such a time there should be no room given for any doubt or question as to what is the property which the purchaser has acquired. All such matters are matters which should be determined, and for the determination of which provision is made, when the property is under attachment and before sale takes place. Section 287 of the Code lays upon the Court the duty of specifying as fairly and accurately as possible the property to be sold, the revenue assessed upon it, the incumbrances and every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property the Court is selling and he is purchasing. Ample powers are given to a Court to arrive at the precise nature

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and value of the property to be sold; and for a decree-holder to allow property to be sold, and still more for a Court to proceed to sell property, without arriving at its nature and value, is contrary to the spirit of the law and not to be justified. The regret is that, as in the present case, too often the provisions of section 287 are not made use of and Courts adopt the slovenly procedure of selling to purchasers what may be valuable property or what may be simply matter for endless litigation. In the course of the argument in this case we came across many disputes that have arisen around this property and make it probable that the purchasers before they obtain quiet possession will have to wade through a sea of litigation.

For the opposite parties, the decree-holders, it was first contended that in inquiring into the various titles and incumbrances connected with the property of the judgment-debtors in mauzas Loharli and Bhadoli the Subordinate Judge was merely acting in the exercise of his jurisdiction and that in no way he had acted illegally or with material irregularity. To this contention we cannot accede. The application for delivery of possession gave the Subordinate Judge jurisdiction to put the purchaser in possession of the property covered by the sale certificate. If in the application the purchaser asked for property which was not included in the sale certificate, or if his application contained any other prayer contrary to the terms of the sale certificate, the Subordinate Judge had jurisdiction to brush aside such matters and to direct delivery of possession only in accord with and over the property specified in the certificate of sale. It did not give jurisdiction to the Subordinate Judge to enter upon any inquiry over titles and matters which were contained, as in the present case, neither in the decree out of which the sale arose, nor in the sale proclamation, nor in the sale certificate. The moment he entered upon such inquiry he was, although the case was within his jurisdiction, acting illegally and with material irregularity.

It was next contended that as the judgment-debtors had another form of remedy in the shape of a regular suit to recover property or properties of which they have been dispossessed that is, if there was property of which they were illegally dispossessed, the power

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granted by section 622 of the Code of Civil Procedure should not be exercised by this Court, and in support of this contention we were referred to the case of *J. J. Guise v. Jaisraj* (1). Special stress was laid upon the words—"that the recognised rule of this Court is that if a party in a civil proceeding applies to us to exercise our powers under section 622 he must satisfy us that he has no other remedy open to him under the law to set right that which he says has been illegally, irregularly or without jurisdiction done by a Subordinate Judge." This was the dictum of Mr. Justice Straight applied by our brother Burkitt to a particular case, the case before him being one in which under section 283 of the Code of Civil Procedure a special remedy by way of regular suit was granted. We agree that in such a case the Court should not grant an extraordinary remedy by way of revision where a special and conclusive remedy is granted by law. The case of *Gopal Das v. Alaf Khan* (2), in which this dictum of Mr. Justice Straight is to be found, was a case in which the petitioner had two alternatives open to him and availed himself of one of the two. The view taken by Mr. Justice Straight was considered in appeal by the learned Chief Justice and another Judge of this Court, and all that they held was that the Judge whose order was appealed against exercised sound discretion in refusing to interfere, not that he had no jurisdiction to interfere under section 622 of the Code of Civil Procedure. So far as that case is an authority at all, it is an authority in favor of the power of Court to interfere under section 622, even though there be an alternative remedy.

Mr. *Charudhri*, who also appeared for the opposite party and to whom we gave special permission to raise an argument over and above that put forward by the learned vakil who conducted their case, contended that the judgment-debtors had no *locus standi* before the Subordinate Judge when they asked him to interfere and not deliver possession in the way in which he intended. But this, if sound, adds still more weight to the argument that in considering that objection the Court was acting without jurisdiction. The

(1) I. L. R., 15 All. 405.

(2) I. L. R., 11 All. 883.

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section of the Code confers upon this Court powers to interfere. We do not say by any means that we should in any and every case interfere in revision; but in a case like this, where it is doubtful, as urged by the learned vakil for the petitioner, whether, on the authority of *Prosunno Kumar Sanyal v. Kali Das Sanyal* (1), a separate suit would lie, and where the Court below has taken upon itself in summary proceedings virtually to decide matters fit for a regular and separate suit, we think it proper under such special circumstances to interfere, and to direct the Subordinate Court to take up the proceedings at the point where it went wrong and to deliver possession to the purchaser strictly in accord with and only over the property set out in the sale certificates. We accordingly set aside the order of the Court below and direct that Court to proceed as indicated above. The petitioner will get the costs of his application.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

INDARJIT (PLAINTIFF) v. LAL CHAND AND ANOTHER (DEFENDANTS).

Act No. 1 of 1872 (Indian Evidence Act) section 92—Evidence to vary or add to the terms of a contract in writing—Evidence to show manner in which consideration was agreed to be paid.

Section 92 of the Indian Evidence Act, 1872, will not debar a party to a contract in writing from showing, notwithstanding the recitals in the deed, that the consideration specified in the deed was not in fact paid as therein recited, but was agreed to be paid in a different manner. *Hukum Chand v. Hira Lal* (2), *Lala Himmat Sahai Singh v. Llewellyn* (3), *Ram Bahksh v. Durjan* (4), referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal* and Babu *Durga Charan Banerji* for the appellants.

Messrs. *T. Conlan* and *D. N. Banerji* and Babu *Besha Ram Bhattacharji* for the respondents.

First Appeal No. 273 of 1893, from a decree of Babu Baijnath, Subordinate Judge of Agra, dated the 13th June 1893.

(1) I. L. E., 19 Calc., 683.

(2) I. L. E., 3 Bom., 159.

(3) I. L. E., 11 Calc., 436.

(4) I. L. E., 9 All., 392.