

1900

MAHAB KWAR

v.

GOMTI KWAR.

Babu *Jogindro Nath Charudhri*, Pandit *Moti Lal Nehru* and Babu *Satish Chandar Banerji* for the appellants.

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

KNOX, ACTING C. J., and BLAIR, J.—This is an application for an injunction under section 493 of the Code of Civil Procedure. Section 493 applies to suits for restraining a defendant from committing a breach of contract or other injury. It is admitted that the case is not concerned with a breach of contract, but it is sought to construe the words “other injury” as words which might have reference to acts of trespass upon property. There is no authority for such a construction.

We dismiss the appeal with costs.

Appeal dismissed.

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July 16.

Before Mr. Justice Knox, Acting C. J., and Mr. Justice Blair.

MAHABIR PRASAD (OBJECTOR) v. PARTAB CHAND (OPPOSITE PARTY).*

Civil Procedure Code, section 244—Parties to the suit or their representatives—Purchaser at auction sale.

Where a decree-holder who had obtained a decree and order under sections 88, 89 of the Transfer of Property Act over certain property, proceeded to attach it in execution of his decree: *Held*, that a third party who had bought the rights and interests of the judgment-debtors at an auction sale held in consequence of a money decree was not a legal representative of the judgment-debtors so as to entitle him to be heard under section 244 of the Code of Civil Procedure at the execution proceedings. *Sabhajit v. Sri Gopal* (1) followed. *Prosunno Kumar Sanyal v. Kali Das Sanyal* (2) distinguished.

THE facts appear sufficiently from the judgment.

Babu *Parbati Charan Chatterji* for the appellant.

Pandit *Madan Mohan Malaviya*, Babu *Datti Lal* and Babu *Davendro Nath Ohdedar* for the respondent.

KNOX, ACTING C. J., and BLAIR, J.—This appeal arises out of an application for execution of a decree. The decree-holder is one Rai Bahadur Partab Chand; the judgment-debtors are persons with whose names we are not concerned. The rights and interests, however, of these judgment-debtors in certain property were purchased at an auction sale held in consequence of a

* Appeal No. 10 of 1900, under section 10 of the Letters Patent.

(1) (1894) I. L. R., 17 All., 222, F. B. (2) (1892) I. L. R., 19 Calc., 683, P. C.

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money decree. At that sale those rights and interests were purchased by Rai Bahadur Mahabir Prasad Narain Singh, the appellant. Upon Rai Bahadur Partab Chand attaching the same property over which he had obtained first a conditional decree under section 88, and then an order absolute under section 89 of the Transfer of Property Act, Rai Bahadur Mahabir Prasad Narain Singh intervened and asked to be heard as the representative of the judgment-debtors in Rai Bahadur Partab Chand's decree. His application has been rejected by both the Courts below; it has also been rejected by this Court upon the ground that a Full Bench of this Court in *Sabhajit v. Sri Gopal* (1) held that a purchaser at an auction sale is not a representative of the judgment-debtor, whose interests he has purchased, within the meaning of section 244 of the Code of Civil Procedure.

We should have thought the matter not open to any further question. The learned vakil, however, who appears on behalf of the objector, sought to establish that this Full Bench ruling was in derogation of what their Lordships of the Privy Council laid down in *Prosunno Kumar Sanyal v. Kali Das Sanyal* (2). We have carefully examined that case: what was therein laid down was this—that when a question arises between the parties to a decree relating to its execution, discharge or satisfaction, the fact that the purchaser, who is no party in the suit, is interested in the result, has never been held as a bar to the application of section 244. This in no way affects what was held by this Court in *Sabhajit v. Sri Gopal* (1). In this case the parties to the suit were the parties to the proceedings; added to them was the purchaser, not as a representative of one of the parties, but as a looker-on interested in the result. Here the question which has to be decided is not one in which the judgment-debtor is any longer interested; in other words, it is not a question arising between the parties to the suit, and section 244 has no application.

We dismiss the appeal with costs.

Appeal dismissed.

(1) (1894) I. L. R., 17 All., 222, F. B.

(2) (1892) I. L. R., 19 Calc., 683, P. C.