

APPELLATE CIVIL.

1900
July 13.*Before Mr. Justice Know, Acting C. J., and Mr. Justice Blair.*DARAB KUAR AND OTHERS (APPELLANTS) v. GOMTI KUAR,
(RESPONDENT).**Civil Procedure Code, section 493—Temporary injunction—“Other injury.”*

Held, that words “or other injury” in section 493 of the Code of Civil Procedure do not include acts of trespass upon property.

THE application of the present appellant in the lower Court was headed “Application under section 493, Civil Procedure Code,” and concluded with the following prayer:—

“Therefore it is prayed that by an *ad interim* injunction under section 493 of the Code of Civil Procedure the defendant be prohibited from realising the amount of decree of rent of the villages in suit and from otherwise interfering in the management of the properties in dispute either by herself or through her mukhtar-ams and karindas.”

was the convict Dammar. He made a long and detailed statement, which was duly recorded by the Magistrate on the 4th of October. From that statement he afterwards resiled and said that it was brought about by malpractices on the part of the police. Of any such malpractices there is no evidence whatever, and we do not believe the allegation. The statement is in full detail. We have studied it more than once, and each time that we study it we rise from it with a conviction that it is in the main, if not wholly, an accurate account of what took place. In addition to this statement there is evidence on the record which presses strongly against both the accused Dammar and Sulig. There is further evidence which, as far as it goes, tends to the conviction of the other three appellants, but so far falls short of proof that it is insufficient to prove participation in the act of murder. We shall shortly allude to this evidence. * * * *

* * * It is at this point that we take into consideration the confession made by Dammar. The learned counsel for Shibcharan and other appellants contended that we could not use it unless there was evidence which, if believed, amounted to proof against his clients. We cannot accede to this contention. We are not prepared to define the exact extent to which, and the circumstances under which, such a confession may be used. The Legislature in using the words which it has placed upon the Statute book obviously intended to confer a wide discretion upon courts and to leave them to appraise the value of such a confession. We are not prepared to say that it might not have been used in the present case, and so far have supplemented the case against Shibcharan and Behari as to leave no room for doubt. * * * *

* First Appeal No. 41 of 1900, from an order of Munshi Sheo Sahai, Additional Subordinate Judge of Saharanpur, dated the 2nd March 1900.

1900

MAHAB KWAR

v.

GOMTI KWAR.

Babu *Jogindro Nath Chaudhri*, 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.

1900
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 Ohledar* 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.