

1899

QUEEN-
EMPRESS.

ADAM KHAN.

reasons. The facts in the case decided by our brother Aikman in no way resemble those in the Calcutta cases, and our brother Aikman's decision is not inconsistent with the rule laid down in them. On the other hand, we have had cited to us the case of *Queen-Empress v. Puran* (1) and the case of *Queen Empress v. Umedan* (2), in which it has been held that a Magistrate who has dismissed a complaint is not thereby precluded from himself entertaining again what is in substance the same complaint. That is the only authority upon which Mr. *Durga Charan* relies. It does not, in our opinion, conflict with the rulings either of the Calcutta Court or of our brother Aikman. We think it utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance deal with, as if it were an appeal or a matter for revision, a complaint which had already been dismissed by a competent tribunal of co-ordinate authority. For these reasons, we accept the recommendation of the District Magistrate and set aside the proceedings pending in the Court below. We desire it to be distinctly understood that we decide nothing except the question actually raised by the facts in this case, which is, that when a competent tribunal has dismissed a complaint, another tribunal of exactly the same powers cannot re-open the same matter on a complaint made to it.

1899

November 10.

APPELLATE CIVIL.

Before Sir Arthur Strachey, Knight, Chief Justice, and Mr. Justice Banerji.
DAULAT SINGH AND ANOTHER (DEFENDANTS) v. JUGAL KISHORE
(PLAINTIFFS).*

Execution of decrees—Civil Procedure Code, section 244—Question “arising between the parties to the suit”—Sale of property by the Collector as ancestral property—Suit to set aside sale on the ground that property was not ancestral.

Certain property of a judgment-debtor having been sold by the Collector acting under section 320 of the Code of Civil Procedure as being ancestral

* Second Appeal No. 937 of 1896 from a decree of Pandit Rajnath Sahib, Subordinate Judge of Moradabad, dated the 3rd August, 1896, confirming decree of Babu Shiva Charan Lal, B. A., Munsif of Nagina, dated the 27th May 1896.

1899

 DAULAT
SINGH
v.
JUGAL
KISHORE

property, the judgment-debtor sued the decree-holder and the auction-purchaser to have the sale set aside upon the two main grounds that the property was not ancestral, and therefore could not legally be sold by the Collector, and that the real purchaser at the auction sale was the decree-holder himself who had not obtained the leave of the Court to bid. *Held* that the questions thus raised were questions arising between the parties to the suit within the meaning of section 244 of the Code of Civil Procedure and that the suit would not lie. *Basti Ram v. Fattu* (1) and *Prosunno Kumar Sanyal v. Kali Das Sanyal* (2), referred to.

THE facts of this case are sufficiently stated in the judgment of the Chief Justice.

Maulvi *Ghulam Mujtaba*, for the appellants.

The respondents were not represented.

STRACHEY, C. J.—The plaintiff in this case claims to recover certain immoveable property, which was sold by the Collector in execution of a decree transferred to the Collector for execution under the rules made under section 320 of the Code of Civil Procedure, from the second defendant, who was the purchaser at that sale. The plaintiff was the judgment-debtor: the first defendant is the decree-holder: and the object of the suit is to recover possession of the property, notwithstanding the execution sale, on the ground that the sale by the Collector was vitiated by certain defects. After a remand made by the lower appellate Court to the Court of first instance, both Courts have decreed the claim. The question raised by this appeal on behalf of the defendants is whether the suit will lie.

Now the first ground on which the suit is based is that the property in question was not ancestral property, and that consequently the decree ought not to have been transferred for execution to the Collector. Before making its order of transfer the Civil Court, in accordance with the rules made by this Court, issued notice to the decree-holder and the judgment-debtor for the determination of the question whether the property was ancestral or not. The judgment-debtor the present plaintiff, did not contest that application, and the order for transfer was thereupon made. It is clear, therefore, that the question whether the

(1) (1886) I. L. R., 8 All., 146.

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

1899

 DAULAT
 SINGH
 v.
 JUGAL
 KISHORE.

property was ancestral or not was a question arising between the parties to the suit—the decree-holder and the judgment-debtor. That being so, the present suit, so far as this first point is concerned, is barred by section 244 (c) of the Code of Civil Procedure, having regard particularly to the interpretation placed on that clause by the Full Bench of this Court in *Basti Bam v. Fattu* (1). It was there pointed out that the section prohibits not only a separate suit between the parties to the decree or their representatives, but also a suit by a party or his representatives against a purchaser at a sale in execution of a decree, the object of which is to determine a question which properly arose between the parties or their representatives, and which relates to the execution, discharge, or satisfaction of the decree. As I have already stated, the question whether this property was ancestral did arise between the parties to the suit. It clearly related to the execution of the decree, because on it depended the Court which should have jurisdiction to execute the decree and the procedure by which the decree should be executed. The Full Bench decision to which I have referred is supported by the case of *Prosunno Kumar Sanyal v. Kali Das Sanyal* (2), decided by their Lordships of the Privy Council. For these reasons it appears to me that, so far as the suit is based upon an allegation that the property was being wrongly treated as ancestral for the purposes of execution, it is barred by section 244 of the Code.

The second ground upon which the suit is based is that the auction-purchaser in this case in execution of the decree, although nominally the second defendant, who is the son of the decree-holder, was really the first defendant, the decree-holder himself, and that as the purchase by the decree-holder was without the permission of the Court, it was in violation of section 294 of the Code. As to that it is sufficient to say that this question too falls within section 244 of the Code, because, on the plaintiff's own showing, it is a question arising between the parties to the suit and relating

(1) (1886) I. L. R., 8 All., 146.

(2) (1892) I. L. R., 19 Cal., 683.

to the execution of the decree. So far as regards the second point, therefore, the suit is also barred by section 244.

The third point raised by the suit is that the sale was effected by the Collector in disregard of an order directing the postponement of the sale passed by the Munsif who had transferred the execution of the decree to the Collector. As to that it is sufficient to say that no such order of postponement could be legally made by the Munsif. The execution having been transferred to the Collector, the Munsif, so long as it remained with the Collector, had no power to interfere with the proceedings, as by postponing the date of sale: only the Collector himself could do that.

These are the only grounds on which the suit has been brought. It follows from what I have said that the suit ought to have been dismissed. This appeal is allowed, the decrees of the Courts below set aside, and the suit dismissed with costs in all Courts.

BANERJI, J.—I am of the same opinion.

Appeal decreed.

1899

DAULAT
SINGH
v.
JUGAL
KISHORE.

REVISIONAL CRIMINAL.

Before Mr. Justice Blair.

W. J. ELLIS (APPLICANT), v. THE MUNICIPAL BOARD OF MUSSOORIE
(OPPOSITE PARTIES).*

Act No. XV of 1883 (N.-W. P. and Oudh Municipalities Act), Section 46—Issue of distress warrant for recovery of alleged arrears of Municipal tax—Jurisdiction of Magistrate.

Held that where a Magistrate, acting under section 46 of Act No. XV of 1883, issues a warrant for the realization of arrears of Municipal taxes alleged to be due, the Magistrate is acting in a ministerial capacity only and has no jurisdiction to inquire as to whether such arrears are really due or not.

THIS was an application for revision arising out of the following circumstances. The Secretary of the Municipal Board of Mussoorie wrote to the Magistrate of Mussoorie, on the 2nd May 1899, stating that a sum of Rs. 135-9-9 was due from one W. J. Ellis, Esq. of Kenneth Lodge Mussoorie on account of Municipal taxes from 1894 to 1898, and requesting the Magistrate to realize such amount under section 46 of Act No. XV of 1883.

1899
August 18.

* Criminal Revision No. 433 of 1899.