

has been delivered affirming the claim, the provision as to the discharge of actionable claims does not apply. Here a competent court, namely, the court of the Assistant Collector, has delivered judgment affirming the claim. These are the only two grounds in the memorandum of appeal. I therefore dismiss the appeal with costs.

An objection has been taken by the plaintiff-respondent under the provisions of section 561 of the Code of Civil Procedure, to the set off which has been allowed by the lower appellate Court. That objection is clearly without force. The landholders were entitled to set off "against the price of crops, the amount of the rent payable by the plaintiff's assignor—[*vide* cl. (d), section 42 of the Rent Act.] The result is that I dismiss both the appeal and the objection with costs.

*Appeal dismissed.*

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MATHURA  
DAS  
c.  
MURLIDHAR.

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June 24.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Knox.*

RAM ADHAR AND ANOTHER (JUDGMENT-DEBTORS) v. NARAIN DAS (AUCTION PURCHASER).\*

*Execution of decree—Objection by judgment-debtor that more had been delivered to the auction-purchaser than was included in his sale certificate—Objection disallowed—Appeal—Civil Procedure Code, section 244.*

Certain landed property was put up for sale in execution of a decree. On the property stood a house. After the sale the auction purchaser obtained possession of the house. The judgment-debtors objected that the house should not have been delivered, inasmuch as no mention was made of it in the sale certificate. This objection was disallowed. *Held*, that the order disallowing the judgment-debtor's objection did not fall within section 244 of the Code of Civil Procedure, and was not otherwise appealable. *Mammod v. Locke* (1) and *Hira Lal Chatterji v. Gourmoni Debi* (2) referred to.

IN this case one Ram Shankar, holding a decree against Ram Adhar and another, caused certain land belonging to the judgment-debtors to be sold by auction in execution of his decree. Upon this land there stood a building described as a "dera," and this building was sold with the land, and the auction purchaser, Narain Das, was put in possession. The judgment-debtors filed

\* First Appeal No. 15 of 1902 from a decree of Munshi Shiva Sahai, Subordinate Judge of Cawnpore, dated the 16th of October 1901.

(1) (1897) I. L. R., 20 Mad., 487. (2) (1886) I. L. R., 13 Calc., 326.

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an objection in the executing court, alleging that the building was in fact a dwelling-house and could not be, and was not, sold with the land, and ought not to have been made over to the auction purchaser. The Court of first instance (Subordinate Judge of Cawnpore) dismissed the application of the judgment-debtors, on the ground mainly that the objection was not one which could be entertained under section 244 of the Code of Civil Procedure, especially after the sale had been completed, and that the building was not in fact, as the judgment-debtors asserted, a dwelling-house.

The judgment-debtors thereupon appealed to the High Court. Babu *Satyā Chandra Mukerji*, for the appellants.

Pandit *Sundar Lal* (for whom Paudit *Baldeo Ram Dave*), for the respondent.

STANLEY, C. J., and KNOX, J.—A preliminary objection is taken to the hearing of this appeal, on the ground that no appeal lies. The facts, so far as they are necessary for the objection, are as follows:—Certain property had been put up for sale in execution of a decree—that property was landed property. Upon the property stood a house. After sale the auction purchaser obtained possession of the house. The judgment-debtors then objected that the house should not have been delivered over, on the ground that no mention of it was made in the sale certificate. The Court below came to the conclusion that as possession had been delivered, be the order a proper or improper one, it could not interfere. The respondent takes a preliminary objection to the effect that the order of the Court below is not an order under section 244, inasmuch as it is not an order made between the parties to the suit or their representatives and relating to the execution, discharge or satisfaction of the decree. The appellants' learned vakil was at first disposed to question this, but on his being referred to the case of *Mammood v. Locke* (1) and the case of *Hira Lal Chatterji v. Gourmoni Devi* (2), he was no longer prepared to sustain his appeal. The result is that this appeal must be dismissed with costs.

*Appeal dismissed.*

(1) (1897) I. L. R., 20 Mad., 487. (2) (1886) I. L. R., 13 Calc., 326.