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v.
MOHAR
SINGH.

Mohar when the succession opened, and it would be a novel proposition to hold that a person so claiming is bound by a contract made by every person through whom he traces his descent.

Their Lordships have already intimated that they will humbly advise His Majesty that the order appealed from be reversed and that the decree of the Subordinate Judge should be restored.

The respondents will pay the costs of this appeal including the cost of the first hearing.

Appeal allowed.

Solicitors for the appellants—Messrs. *Barrow, Rogers and Nevill.*

Solicitors for the respondent—Messrs. *Ranken, Ford, Ford and Chester.*

J. V. W.

APPELLATE CIVIL.

Before Mr. Justice Burkitt and Mr. Justice Chamier.

MAKKA (JUDGMENT-DEBTOR) v. SRI RAM AND ANOTHER
(DECREE-HOLDERS).*

Execution of decree—Joint decree—Sale in execution—Purchase by decree-holders—Receipt for part of decretal money given by one decree-holder on behalf of both—Sale set aside—Appeal—Civil Procedure Code, sections 244, 294, 311.

Two persons holding a joint decree caused certain immovable property of their judgment-debtor to be sold, and having obtained permission to bid, themselves became the purchasers. The property was knocked down to the two decree-holders jointly. An application was then made to the officer conducting the sale by one of the decree-holders auction purchasers, but purporting to act in the name of, and on behalf of the other auction purchaser as well, asking that the purchase money should be set off against the amount due under the decree, and that to that extent satisfaction of the decree should be entered up; he at the same time paid the auction fees. This application was made under the second clause of section 294 of the Code of Civil Procedure. A receipt for the amount of the purchase money was given to the officer conducting the sale, and by him was forwarded to the Court of the Subordinate Judge, under whose orders the sale was held. The judgment-debtor subsequently made an application under section 311 to the Subordinate Judge, asking to have the sale set aside. That application was rejected; but the Subordinate

* Second Appeal No. 575 of 1900 from a decree of F. L. Taylor, Esq., District Judge of Shahjahanpur, dated the 7th March 1900, reversing an order of Babu Nihal Chandra, Subordinate Judge of Shahjahanpur, dated the 18th November 1899.

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Judge, instead of confirming the sale, set it aside, on the ground that only one of the decree-holders auction purchasers had put in the receipt under the second clause of section 294, and directed a re-sale, and this notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also. On appeal to the District Judge the order of the Subordinate Judge was set aside and an order passed confirming the sale. From this order the judgment-debtor appealed to the High Court on the sole ground that no appeal lay to the District Judge.

Held that the order passed by the Subordinate Judge was appealable as an order passed under section 224 of the Code of Civil Procedure.

In this case Sri Ram and Damodar Das obtained a decree against one Makka, in execution of which certain immovable property of the judgment-debtor was put up for sale. The decree-holders obtained permission to bid at the sale, and eventually became the auction purchasers. The property was knocked down to the two decree-holders jointly. An application was then made to the officer conducting the sale by one of the decree-holders, auction purchasers, but purporting to act in the name of and on behalf of the other auction purchaser as well, asking that the purchase money should be set off against the amount due under the decree, and to that extent satisfaction of the decree should be entered up; he at the same time paid the auction fees. This application was made under the second clause of section 294 of the Code of Civil Procedure. A receipt for the amount of the purchase money was given to the officer conducting the sale, and by him was forwarded to the Court of the Subordinate Judge, under whose orders the sale was held. The judgment-debtor subsequently made an application under section 311 of the Code to the Subordinate Judge, asking to have the sale set aside. That application was rejected. The Subordinate Judge, however, did not confirm the sale, but on the contrary set it aside and directed a re-sale on the ground that the presentation of the receipt by one only of the decree-holders, auction purchasers, was insufficient, even though the other admitted that the receipt had been presented on his behalf also.

On appeal to the District Judge the order of the Subordinate Judge was set aside and the sale confirmed. The judgment-debtor thereupon appealed to the High Court, his sole ground of appeal being that the order of the Subordinate Judge setting aside the sale was not appealable to the District Judge.

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Maulvi *Ghulam Mujtaba* for the appellant.

Padit *Sundar Lal* (with Babu *Jogindro Nath Chaudhri* and Babu *Parbati Charan*) for the respondents.

BURKITT and CHAMIER, JJ.—The facts of this case are somewhat peculiar. The respondents in the present appeal, *i.e.* Sri Ram and Damodar Das, obtained a decree against the appellant Makka, in execution of which certain immovable property was sold. The decree-holders obtained permission to bid at the sale, and eventually became the auction purchasers. The property was knocked down to the two decree-holders jointly. An application was then made to the officer conducting the sale by one of the decree-holders auction purchasers, but purporting to act in the name of, and on behalf of the other auction purchaser as well, asking that the purchase money should be set off against the amount due on the decree, and to that extent satisfaction of the decree should be entered up; he at the same time paid the auction fees. This application was made under the second clause of section 294 of the Code of Civil Procedure. A receipt for the amount of the purchase money was given to the officer conducting the sale, and by him was forwarded to the Court of the Subordinate Judge, under whose orders the sale was held. The judgment-debtor subsequently made an application under section 311 to the Subordinate Judge asking to have the sale set aside. That application was rejected. One would have expected, then, that the Subordinate Judge, as provided by section 312, would have at once passed an order confirming the sale. He did not adopt that course, because he discovered that one only of the auction purchasers decree-holders had put in the receipt under the second clause of section 294. The learned Subordinate Judge held that the presentation of a receipt by one only of two joint decree-holders was insufficient. He therefore set aside the sale and directed a re-sale, notwithstanding that the other decree-holder admitted that the receipt had been presented on his behalf also.

On appeal to the District Judge, that officer set aside the order of the Subordinate Judge and passed an order confirming the sale. In this appeal the only point taken before us is, that no appeal lay to the District Judge. The learned vakil for the

appellant first of all contended that the order was purely interlocutory. This, however, he did not seriously press, and we do not think there is anything in it. His second and third contentions were, that the order was not appealable under section 588, nor was it appealable under section 244. Now the facts show that an application was made under the second clause of section 294: such an application can be made only by a person who is a decree-holder; the fact that the person who made the application had become an auction purchaser is immaterial; he is still none the less a decree-holder. The point which the Subordinate Judge had to decide was, whether the receipt put in by one decree-holder, acting both for himself and his co-decree-holder, was one which should be accepted, and on which part satisfaction of the decree should be entered up. In our opinion this is eminently a case under section 244; the question before the Court related undoubtedly to the execution and part satisfaction of the decree, and the parties before the Court were the parties to the suit, *i.e.* the decree-holder and the judgment-debtor, and they were disputing with one another in that capacity as to the part satisfaction of the decree. It is absolutely immaterial, in our opinion, that one of the parties on one side happened to be also the auction purchaser. In our opinion the order passed by the Subordinate Judge was a decree under section 244 of the Code of Civil Procedure, within the meaning of that word as defined in section 2 of that Code, and was therefore appealable to the District Judge. In this view it is unnecessary for us to consider the contention of the respondent that the appeal to the District Judge might be considered an appeal under section 588, clause (16), from an order under section 312, setting aside a sale of immovable property.

For the above reasons we dismiss this appeal with costs.

Appeal dismissed.

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