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no other such orders." An order passed under section 491 is in all respects a similar order to an order passed under section 497, and therefore comes under the words "no other such orders." It therefore seems to us that the Legislature expressly excludes a right of appeal in respect of orders passed under section 491. We regret that we are obliged to come to this conclusion, because it is possibly the case that through inadvertence or otherwise orders under section 491 were not mentioned in section 588. Most unjust orders may be passed under this section, and yet there is no right of appeal. We are supported in the view which we have taken by the decision in the case *Narasinga Bhakshi v. Govinda Bhakshi* (1). For the above reasons we dismiss the appeal with costs.

Appeal dismissed.

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REVISIONAL CIVIL.

Before Mr. Justice Banerji and Mr. Justice Richards.

RAM SINGH AND ANOTHER (JUDGMENT-DEBTORS) v. SALIG RAM (DROCK-HOLDER) AND KURE SINGH (AUCTION PURCHASER).*

Civil Procedure Code, sections 310A, 622—Execution of decree—Application to set aside sale—Who have a right to apply—Revision.

A mortgagee sued for sale on his mortgage impleading besides the mortgagee two persons who claimed a title to the mortgaged property adverse to the mortgagee. In that suit it was decided that the property the subject of the mortgage in suit belonged to the mortgagor and not to the other defendants. The plaintiff mortgagee obtained a decree for sale and caused the mortgaged property to be sold by auction. The defendants, other than the mortgagor, applied to have this sale set aside under section 310A of the Code of Civil Procedure, but their application was rejected, and they then sought in revision to get this order reversed.

Held by BANERJI, J.—That the defendants applicants were not entitled to make an application under section 310A of the Code, they not being judgment-debtors whose property had been sold.

Per RICHARDS, J.—Whether or not the applicants were entitled to make the application which they did make (and they possibly were so entitled) the Court below did not fail to exercise a jurisdiction vested in it by law nor did it act in the exercise of that jurisdiction illegally. Its order was, therefore, not open to revision. *Rajah Amir Hassan Khan v. Sheo Baksh Singh* (2) referred to.

* Civil Revision No. 1 of 1905.

(1) (1900) I. L. R., 24 Mad., 62.

(2) (1884) L. R., 11 I. A., 287.

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THIS appeal arose out of a suit for sale upon a mortgage executed by one Shibba. In that suit one Ram Singh intervened, claiming the mortgaged property adversely to Shibba. He was made a party to the suit, and, as between him and the plaintiff mortgagee, it was decided that the mortgaged property belonged to Shibba and not to the intervenor. The plaintiff obtained a decree and brought the mortgaged property to sale, and it was purchased by one Kure Singh. Ram Singh and his brother Sham Singh then came in with an application, under section 310A of the Code of Civil Procedure, seeking to have the sale set aside. The Court of first instance (Munsif of Ghaziabad) dismissed the application, holding that the applicants were not entitled to make it, not being "persons whose immovable property had been sold" within the meaning of the section. Ram Singh and Sham Singh thereupon applied in revision to the High Court.

Babu *Sital Prasad Ghosh*, for the applicants.

The Hon'ble Pandit *Sundar Lal* and Pandit *Baldeo Ram Dave*, for the opposite parties.

BANERJI, J.—This is an application under section 622 of the Code of Civil Procedure for revision of the order of the Munsif of Ghaziabad refusing to entertain an application made by the applicants under section 310A of the Code for setting aside a sale which had taken place in execution of a decree obtained by Salig Ram, respondent, upon a mortgage made in his favour by one Shibba. The Court below holds that the applicants are not, within the meaning of section 310A, persons whose property has been sold in execution of the decree. It has been urged on behalf of the respondents that no application for revision lies. I am not prepared to hold that this objection is valid, as it seems to me that, if the applicant's contention is correct, the Court below failed to exercise a jurisdiction vested in it by law. At the same time I do not wish to decide the question, inasmuch as, assuming that an application lies, I hold that the Court below was right in its decision as to the provisions of section 310A. In my judgment it is not every judgment-debtor who can under that section apply to have the sale set aside, but only those judgment-debtors whose property has been sold in accordance with

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the provisions of the Code. The object of the section is to afford to the person whose property has been sold a chance of relieving it from the effect of the sale. No one except that person, or persons deriving title from him, can in my opinion come in under the section. The auction purchaser has by his purchase stepped into the shoes of the judgment-debtor whose property has been sold, and if he has made a good bargain, he is not bound to give up the property to any other judgment-debtor who may offer to pay the amounts mentioned in the section. In the present case the Court below has found that the applicants are not persons whose property has been sold. The mortgagor was one Shibba. The applicant Ram Singh and two other persons who were made parties to the suit were joined as defendants, not because they derived title from Shibba, the mortgagor, but because they claimed an interest adverse to that of the mortgagor, and denied that he had any right to mortgage the property. In the suit itself an issue was raised as to whether Shibba was the rightful owner of the property, and as between the mortgagee and the other defendants it was decided that he was the rightful owner. Further, the Court below has found in these proceedings that Shibba was the rightful owner of the property, and that the applicants have not acquired such a title to it as would entitle them to be regarded as persons whose property has been sold. There is in my opinion another reason for refusing this application. Assuming that section 622 applies, this Court is not bound to exercise the discretion given to it by the section in every case. In the present instance the applicants did not pay the decretal amount after the decree was passed. They did not pay it after the order absolute was made. Not only did they pay nothing after the making of that order, but they also omitted to pay or tender the decretal amount until the sale had actually taken place. I see no reason why in the case of such persons whose application has been refused by the Court below I should interfere in revision. For the above reasons I would dismiss the application with costs.

RICHARDS, J.—The applicants claim to be persons whose immovable property has been sold within the meaning of section 310A of the Code of Civil Procedure. The applicants were

made parties to the mortgage suit out of which the execution arose. It is true that there was an allegation that they claimed, not through or under the mortgagor, but adversely to him. The fact, however, remains that the mortgagee thought it right to make them parties. A decree was made against them, and so far as the various proceedings go, the property appears to have been treated as their property as much as of any other defendants. Further, I take it as being quite clear from the judgment of the Court below that they are and have been for a considerable time in physical possession of the property in question. Now it appears to me that it is impossible to give a very strict interpretation to section 310A, and to hold that only those persons who have an absolutely perfect title as against all the world can claim the benefit of this section, and I have great doubts whether it is possible for a mortgagee who has thought fit to make party a defendant to the mortgage suit to say that he has not sufficient interest in the property to claim the benefit of section 310A, and if he cannot, I do not think that an auction purchaser of mortgaged property sold in execution of such a decree can be in a better position. However, upon another ground I think the present application must fail. In my opinion the lower Court did not fail to exercise a jurisdiction vested in it by law, nor did it act in the exercise of its jurisdiction illegally. The lower Court heard and entertained an application to set aside the sale. It went carefully and thoroughly into the evidence, and having done so, even if it came to a wrong decision whether in fact or in law, its decision ought not to be questioned by way of revision. In the case of *Rajah Amir Hassan Khan v. Sheo Baksh Singh* (1) this very question arose in a case in which the Court whose decision was sought to be revised had decided the question of *res judicata*. Their Lordships say (at page 239):—"It appears that they had perfect jurisdiction to decide the question which was before them and they did decide it. Whether they decided it rightly or wrongly, they had jurisdiction to decide the case, and even if they decided wrongly they did not exercise the jurisdiction illegally or with material irregularity." In my opinion the lower Court had full

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jurisdiction to decide the question whether or not the applicant's property had been sold, and having honestly decided to the best of its ability that the property sold was not the property of the applicants it had jurisdiction to refuse to make an order setting aside the sale. For these reasons I would also dismiss the application.

By THE COURT.—The application is dismissed with costs.

APPELLATE CIVIL.

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June 27.

Before Mr. Justice Banerji and Mr. Justice Richards.

VILAYAT HUSEN (JUDGMENT-DEBTOR) v. MAHARAJA MAHENDRA
CHANDRA NANDY (DECREE-HOLDER).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 193—Civil Procedure Code, sections 562 and 588—Remand—Appeal.

There is no appeal from an order of remand passed under section 562 of the Code of Civil Procedure in a suit or proceeding under the Agra Tenancy Act, 1901.

THIS was an appeal arising out of an application to execute a decree for rent against a surety under the provisions of section 253 of the Code of Civil Procedure. The surety raised various objections to the decree being executed against him, with the result that the decree-holder's application was dismissed by the first Court (Deputy Collector). The decree-holder appealed, and on this appeal the District Judge set aside the decision of the Deputy Collector and remanded the case under section 562 of the Code of Civil Procedure. From this order of remand the judgment-debtor appealed to the High Court.

Mr. *Abdul Majid*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Maulvi *Muhammad Ishaq*, for the respondent.

BANERJI and RICHARDS, JJ.—We think that the objection taken on behalf of the respondent that no appeal lies must prevail. The appeal has been preferred against an order made under section 562 of the Code of Civil Procedure remanding

* First Appeal No. 18 of 1905, from an order of L. Marshall, Esq., District Judge of Ghazipur, dated the 22nd of September 1904.