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NIADAR  
MAL  
v.  
RAUNAK  
HUSAIN.

Lordships at page 399 seem to us to tell against the respondent :—“ It is therefore necessary to ascertain what are the true grounds and scope of the present suit in order to see whether the refusal of the application under the sections specified has already determined the question now raised.” In the present case the question now raised was considered and determined against the plaintiff in the proceedings under section 108. For the above reasons we allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's suit with costs in both Courts.

*Appeal decreed.*

*Before Mr. Justice Aikman.*

UMED (JUDGMENT-DEBTOR) v. JAS RAM (DECREE-HOLDER).\*

*Civil Procedure Code, sections 311, 312 and 313—Execution of decree—Sale in execution—Objection subsequently taken by the judgment-debtor that the property sold was not legally saleable—Estoppel.*

*Held* that a judgment-debtor who might have raised objections to a sale in execution of a decree against him, but who has refrained from doing so, and who might have appealed against the order for sale, has no right, after the sale has been carried out, to prefer an objection that the property sold was not legally saleable. *Ramoharibar Misr v. Bechu Bhugat* (1) and *Durga Charan Mandal v. Kali Prasanna Sarkar* (2) followed.

THIS was an appeal by a judgment-debtor against whom a decree had been passed under section 90 of the Transfer of Property Act. On the 16th of February 1906 the decree-holder applied for the attachment of a house and certain trees in execution of this decree. The property was attached on the 24th of March 1906 and the sale was fixed for the 31st of May 1906, on which date the property was sold and purchased by one Hira Lal, who was apparently the son of the decree-holder. On the 12th of June 1906 the judgment-debtor filed an objection to the sale on the ground that the property sold was not legally saleable in execution of the decree against him, inasmuch as the house belonged to and was occupied by him as an agriculturist and the trees stood on his occupancy holding. Both the decree-holder and the auction-purchaser were made parties to the application.

\* Second Appeal No. 48 of 1907, from a decree of J. H. Cuming, Esq., Additional District Judge of Aligarh, dated the 29th of October 1906, reversing a decree of Maulvi Mubarak Husain, Munsif of Bulandshahr, dated the 28th of July 1906.

The decree-holder alone resisted the application. He denied that the house was occupied by the judgment-debtor as an agriculturist.

The Court of first instance (Munsif of Bulandshahr) sustained the objection of the judgment-debtor and set aside the sale. On appeal the lower appellate Court (Additional District Judge of Aligarh) reversed the Munsif's order and dismissed the objection. The judgment-debtor appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Munshi *Gobind Prasad*, for the respondent.

AIKMAN, J.—This is an appeal by a judgment-debtor against whom a decree was passed under section 90 of the Transfer of Property Act. On the 16th of February 1906 the respondent decree-holder applied for the attachment of a house and certain trees in execution of this decree. The property was attached on the 24th of March 1906 and sale was fixed for the 31st of May 1906, on which date the property was sold and purchased by one Hira Lal, who is apparently son of the decree-holder. On the 12th of June 1906 the judgment-debtor filed an objection to the sale on the ground that the property sold was not legally saleable in execution of the decree against him, inasmuch as the house belonged to and was occupied by him as an agriculturist and the trees stood on his occupancy holding. Both the decree-holder and the auction-purchaser were made parties to the application. The decree-holder alone resisted the application. He denied that the house was occupied by the judgment-debtor as an agriculturist.

The Munsif sustained the objection of the judgment-debtor and set aside the sale. On appeal the learned Additional Judge reversed the Munsif's order and dismissed the objection. The judgment-debtor comes here in second appeal.

Section 313 of the Code of Civil Procedure allows the purchaser at a sale in execution of a decree to apply to the Court to set aside the sale on the ground that the person whose property purported to be sold had no saleable interest therein. But that section does not recognise any right in the judgment-debtor to file such an objection after sale. No doubt the judgment-debtor might before sale object that the property attached is not

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legally saleable in execution of the decree. Such an objection would be clearly a matter falling within clause (c) of section 244 of the Code. But in this case the learned Judge finds that the judgment-debtor was a party to the order for sale and that he knew of the proposed sale. He holds that, this being so, it was not open to him to allow the sale to take place and then file an objection that the property was not saleable. In the case relied on by the Court below, namely, *Durga Charan Mandal v. Kati Prasanna Sarkar* (1) the learned Judges at page 732 of the judgment say:—"A difficulty arises in this wise:—An order for sale was made and in furtherance of that order the property was sold. Whatever may be the effect of that sale, if the judgment-debtors were parties to that order, or were aware of it and did not appeal against it, they are now precluded from questioning the propriety of that order, and consequently of the sale that has taken place under the order." This is clearly an authority in support of the view taken by the learned Additional Judge and I see no reason to dissent from it. It also appears to me to be in accordance with what was said by Oldfield, J., in the case *Ramchhaibar Misir v. Bechu Bhagat* (2). There, after a sale had taken place, the judgment-debtor put in an application to the effect that the property sold was a right of occupancy tenure and not saleable by law. Oldfield, J., as to this said:—"It is an objection which the judgment-debtor might have taken at the time of attachment prior to the sale, but it is not one he can take after the sale under section 311 so as to afford a ground under section 312 for setting aside the sale." It is clear that section 311 does not apply. In my opinion a judgment-debtor who might have raised objections prior to the sale, but who has refrained from doing so, and who might have appealed against the order for sale, has no right after the sale has been carried out to prefer an objection that the property sold was not legally saleable. As the learned Additional Judge remarks, "to hold otherwise would only be to encourage deliberate and mischievous procrastination." For the above reasons the appeal in my opinion fails, and I dismiss it with costs.

*Appeal dismissed.*

(1) (1899) I. L. R., 26 Calc., 727. (2) (1885) I. L. R., 7 All., 641.