

## APPELLATE CIVIL.

1906  
November 14.*Before Mr. Justice Sir George Knox and Mr. Justice Richards.*SHIAM SUNDAR LAL (OPPOSITE PARTY) v. KAISAR ZAMANI BEGAM,  
(APPLICANT)\*.*Civil Procedure Code, section 583—Execution of decree—Restitution of property sold in execution of a decree reversed in appeal—Procedure.*

In a suit for a declaration that certain property belonged to the defendant judgment-debtor the plaintiff decree-holder obtained a decree and proceeded on the strength thereof to sell the property. In appeal, however, this decree was reversed. The rightful owner of the property sold then applied to the Court for restitution of the property. *Held* that whether the application could or could not be considered as one falling strictly within the terms of section 583 of the Code of Civil Procedure, the applicant was entitled to restitution. *Radhey Singh v. Mangni Ram* (1) referred to.

IN execution of a decree for money the decree-holder attached certain property as belonging to his judgment-debtor. After the attachment the decree-holder assigned the decree to one Shiam Sundar Lal. The assignee attempted to bring the attached property to sale, but was resisted by one Kaisar Zamani Begam who claimed to be a transferee of the property. The result was that the objector's plea was allowed and the property released from attachment. The decree-holder then brought a suit to have the property declared liable to sale in execution of his decree. In this he was successful and the property was brought to sale. Subsequently, however, the declaratory decree was set aside on appeal. The objector then applied for restoration of the property, which the decree-holder had purchased. The Court of first instance (Subordinate Judge of Bareilly) allowed this application. The decree-holder thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.Mr. *B. E. O'Connor*, for the respondents.

KNOX and RICHARDS, JJ.—In this case the appellant as representative of one Muhammad Husain had a decree originally obtained against one Lalji Mal. Certain property was attached and directed to be sold. The present respondent objected that the property had become vested in her and was not liable to be sold in execution of the decree. The objection was allowed and

\*First Appeal No. 55 of 1906 from a decree of Pandit Pitambar Joshi, Subordinate Judge of Bareilly, dated the 2nd of December 1905.

(1) (1902) 6 C. W. N., 710.

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the decree-holder instituted a suit for a declaration that the property was liable to sale in execution of the decree. The Court of first instance decreed this suit and the decree-holder proceeded to sell and did sell the property. The defendant, however, appealed, and on appeal the decree of the Court of first instance was set aside, and the respondent in this suit established her right to the property. She now seeks to be restored to the property, which admittedly was sold in execution of the decree of the Court of first instance which has been set aside on appeal. The learned Subordinate Judge has treated the application as one made strictly under the provisions of section 583 of the Code of Civil Procedure and has decided that the application was properly made under the provisions of that section. The appellant, however, contends that that section cannot apply to a decree which was merely declaratory in its nature and not capable of execution. The respondent's counsel on the other side relies on the inherent jurisdiction of the Court to restore a party to the position he occupied before that position was lost in execution of a decree of Court subsequently set aside. We consider that, whether the order appealed from could be made under the provisions of section 583 or by virtue of the Court's inherent jurisdiction, the order was a right and proper order and that the respondent is entitled to be restored to the property sold in execution of the decree. The principle involved was discussed in the case of *Radhey Singh v. Mangni Ram* (1). In the course of the judgment, after referring to the authorities, the following passage occurs:—

“The principle on which the Courts have proceeded is that when there has been a wrong done by an order of a Court passed, which has been set aside on appeal, the Court executing the final decree, without express authority of law, is competent to put the parties into the position that they occupied before that order.” We consider that this principle is applicable to the present case, and that it is absurd almost to contend that the respondent ought now to bring a fresh suit for possession of the property which she seeks to be restored, which would be a suit completely parallel to that which has already been brought by the decree-holder. We dismiss the appeal with costs.

*Appeal dismissed.*