

1909

MOTI LAL
v.
BHAGWAN
DAS.

contends that as according to the finding of the courts below the sale in his favour was a genuine transaction, the house sold cannot be brought to sale as the property of the judgment-debtors. This contention is in our judgment well founded. As we have stated above the sale has been found to be genuine. Therefore the ownership of the property has passed to the plaintiff. If a part of the consideration has remained unpaid, as found by the courts below, the vendors have a lien on the property sold for the unpaid purchase money, but that does not entitle the decree-holder of the vendors to bring the property to sale in execution of his decree as the property of his debtors. He may attach the unpaid portion of the purchase money which is due to his judgment-debtors and enforce the lien on the house for the said money but he cannot cause the house purchased by the plaintiff to be sold for the recovery of the unpaid purchase money to which he, as decree-holder, is not entitled. We think that the courts below were wrong in holding that the decree-holder is entitled to realise the unpaid purchase money in execution of his decree by sale of the property which the plaintiff has purchased. We accordingly allow the appeal and decree the plaintiff's claim but under the circumstance make no order as to costs.

Appeal allowed.

1909,
April 29.

Before Mr. Justice Banerji.

BHAWAN SINGH (PLAINTIFF) v. NAROTTAM SINGH AND ANOTHER
(DEFENDANTS)*

Public thoroughfare—Nuisance—Private action in respect of—Damage in common with others—No special damage—Mandatory injunction—Suit for—Maintainability of.

A private action cannot be maintained in respect of a public nuisance save by a person who suffers particular damage beyond what is suffered by him in common with all other persons affected by the nuisance.

THE facts of this case are set out in the judgment.

Dr. Satish Chandra Banerji, (for whom Babu Jagabandhu Phani) for the appellant.

Pandit Baldeo Ram Dave, for the respondent.

*Second Appeal No. 1227 of 1907 from a decree of Chhajju Mal, Subordinate Judge of Mainpuri, dated the 1st of June 1907, reversing a decree of Sushil Chandra Banerji, Munsif of Mainpuri, dated the 2nd of April 1907.

BANERJI, J.—The suit which has given rise to this appeal was brought by the plaintiff, who is a tenant of the defendants, zamindars, for demolition of certain constructions alleged to have been made on a public thoroughfare and for the widening of that thoroughfare for the passage of carts. The court of first instance decreed the claim but the lower appellate court has dismissed it. It was found by the court of first instance, and it is admitted by the learned Vakil for the appellant, that the pathway in question is a public thoroughfare. The alleged obstruction to it is therefore a public nuisance. It is a well-known rule that a private action cannot be maintained in respect of a public nuisance save by a person who suffers particular damage beyond what is suffered by him in common with all other persons affected by the nuisance (Pollock on Torts, VII Edn., p. 395). It is not alleged in this case that the plaintiff has suffered any particular damage. On the contrary, it has been found by the lower appellate court that there is a way across the waste land lying to the south of the defendant's house for the passage of the plaintiff's carts. So that it cannot be said that the plaintiff has sustained any particular damage. This being so the plaintiff is not entitled to have the alleged nuisance removed. On this ground the plaintiff's suit must fail and has been rightly dismissed. I dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

1909

May 4.

Before Mr. Justice Richards and Mr. Justice Alston.

DAMBER SINGH, (PETITIONER) v. SRIKRISHN DASS, (OPPOSITE PARTY).
Act (Local No. II) of 1901 (Agra Tenancy Act), sections 167, 177—Execution of decree—Appeal—Revision—Jurisdiction.

A suit was dismissed by the Revenue Court as not cognizable by it and the District Judge, upon appeal, having dealt with it under sections 196 and 197 of the Tenancy Act, made a decree, execution of which was applied for in the court of the Assistant Collector of the first class who rejected the application; *held* that no application in revision lay against the order of the Assistant Collector refusing execution.

* Civil Revision No. 55 of 1908, against an order of M. Habibullah, Assistant Collector of Aligarh.