

of 6 per cent. per annum from the 21st of July, 1902. The costs of this objection will be paid and received by the parties in proportion to failure and success.

Appeal dismissed.

1909

RAGHUBIR
SINGH

v.

RANI
RAGHUBIR
KUNWAR.

1909.

April 20.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.

MOTI LAL (PLAINTIFF) v. BHAGWAN DAS AND OTHERS (DEPENDANTS).*

Sale—Purchase money partly paid—Vendor's lien—Right of vendor's decree-holders to bring the property to sale in execution as his judgment debtor's property.

Where on a sale part of the sale consideration remains unpaid, the vendor has a lien on the property sold for the unpaid purchase money. But this does not entitle any decree-holder of the vendor to bring the property to sale in execution of his decree as property of his judgment-debtor. He may attach the unpaid portion of the purchase-money which is due to his judgment-debtor and enforce his lien on the property but he cannot cause the property purchased by a third party to be sold for the recovery of the unpaid purchase-money to which he, as decree-holder, is not entitled.

THE facts of the case will appear from the judgment.

Babu *Benod Behari*, for the appellant.

No one appeared for the respondents.

STANLEY, C. J., and BANERJI, J.—The respondent Bhagwan Das obtained a money decree against Shiam Lal, Mulchand, Sardar Singh and Puran Chand and in execution of that decree caused a house to be attached. That house had been sold to the plaintiff by the guardian of the minors, judgment-debtors, on the 9th of June 1904. The suit out of which this appeal has arisen was brought by the purchaser Moti Lal for a declaration that the house in question was not liable to sale in execution of the decree held by Bhagwan Das against his judgment-debtors. The court of first instance found that the sale in favour of the plaintiff was a real transaction but that Rs. 417 out of the consideration remained unpaid and therefore the vendors had a lien on the house for the aforesaid amount of purchase money. It made a decree declaring the sale to be genuine but it further declared that the decree-holder was entitled to realise Rs. 417, the unpaid purchase money by sale of the house. This decree has been affirmed by the lower appellate court. The plaintiff

* Second Appeal No. 1108 of 1907 from a decree of C. Rustomji, Additional District Judge of Agra, dated the 4th of May 1907 confirming a decree of Chhaju Mal M.A., Subordinate Judge of Agra, dated the 2nd of January 1906.

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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.