

for want of registration. We accept this and the connected appeals, set aside the orders of the lower appellate court and restore the decree of the court of first instance dismissing the suits. The plaintiffs will pay all costs.

MUNSHI LAL
v.
THE NOTIFIED
AREA OF
BARAUT.

Appeals allowed.

Before Mr. Justice Ryves and Mr. Justice Piggott.

SARVI BEGAM (DECREE-HOLDER) v. TAJ BEGAM (JUDGMENT-DEBTOR)*

Civil Procedure Code (1908), order XXI, rules 35, 95 and 96—Execution of decree—Purchase of undivided share in a house—Resistance to possession by judgement-debtor—Remedy to which purchaser is entitled.

In execution of decree held by her the decree-holder purchased an undivided share in a house which the judgement-debtor owned jointly with one S. On attempting to get possession the decree-holder was resisted, not by S, but by the judgement-debtor. *Held*, on a construction of rules 35 and 95 of order XXI of the Code of Civil Procedure, that the decree-holder was entitled to have the judgement-debtor removed from the premises.

THE facts of this case were as follows:—

One Musammat Sarvi Begam obtained a simple money decree on the 28th of August, 1905, against Taj Begam, her sister, and in execution of that decree got Taj Begam's share in a house attached and put to sale and purchased it on the 24th of June, 1912. On the 9th of October, 1912, she applied to the court for possession of the southern portion of the house, stating that Taj Begam lived in that portion and the other co-sharer Sahibzadi Begam occupied the other portion. On the 11th of December, 1912, the court ordered the amin to deliver possession to Sarvi Begam by ejection of Taj Begam. When the amin went to deliver possession, Taj Begam objected that as she held an undivided share in the house the decree-holder, Sarvi Begam, was not entitled to actual possession but only to formal possession. The amin submitted this objection of Taj Begam to the court, which ordered that as the property was undivided actual possession could not be given, but only such formal possession as order XXI, rule 96, allowed. The decree-holder appealed.

Babu *Piari Lal Banerji* for the appellant.

The decree-holder having stated that Taj Begam was living in a defined portion of the house was entitled to get Taj Begam ejected

* First Appeal No. 110 of 1913 from a decree of Mohan Lal Halku, Subordinate Judge of Meerut, dated the 26th of November, 1912.

1914
January, 29.

1914

SARVI
BEGAM
v.
TAJ BEGAM.

from that portion. It was not open to Taj Begam to plead the right of her co-sharer, as she was not concerned with any question which might arise between her co-sharer and Sarvi Begam. Order XXI, rule 96, could not possibly apply, as the particular portion of property over which possession was sought was not in the possession of a tenant nor was any other person entitled to it, the other co-sharer Shaibzadi Begam having laid no claim to it. Therefore the court was bound to proceed to order possession to be delivered according to the provisions of order XXI, rule 95.

[PIGGOTT, J.—referred to order XXI, rule 35.]

That section in its terms applied only to decrees for possession, but the analogy might be extended to the present case. All that Sarvi Begam wanted was that Taj Begam should be ejected and that she be given possession jointly with Sahibzadi Begam.

No one appeared for the respondent.

RYVES and PIGGOTT, JJ:—The appellant Musammat Sarvi Begam purchased at auction the right of Musammat Taj Begam, which amounted to a specified undivided share (136 out of 192 *sihams*) in a certain house. The rest of the house belonged to Musammat Sahibzadi Begam, who is not a party to this proceeding. The judgement-debtor, Musammat Taj Begam, seems to have been endeavouring to obstruct Musammat Sarvi Begam and to prevent her from obtaining effective possession of what she purchased. The court below has ordered possession to be given under order XXI, rule 96, of the Code of Civil Procedure. But this rule has clearly no application to the facts of the present case. Musammat Sarvi Begam is entitled to effective possession of what she purchased, namely, the undivided share belonging to Musammat Taj Begam aforesaid. The provisions of order XXI, rule 95, may be read with those of order XXI, rule 35, clause (2), whenever it is a question of giving effective possession of an undivided share either to a decree-holder or to an auction-purchaser under a decree. We amend the order of the court below by directing that actual possession be given to the appellant, Musammat Sarvi Begam, in accordance with the provisions of order XXI, rules 35 and 95. The appellant will get her costs of this appeal.

Order modified.