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law of Scotland I am bound to say that it does not appear to me to be found on any principle of justice or equity, or even of public policy, which justifies its extension to the jurisprudence of other countries." It is somewhat doubtful whether the doctrine of *Merryweather v. Nixan* (1) should be applied to India, but it is certain that it will not be extended (see the remarks of the other noble Lords who decided *Palmer's* case). In our opinion, however, the question hardly arises in the present case, because the Rs. 8,000 odd, which according to the compromise decree the defendants had to pay in no way represented a decree for damages against tort-feasors. It was a sum of money which the defendants to the suit agreed (as part of the compromise) to pay, altogether irrespective of any tort they might have committed. There can be no doubt that the decree-holder was entitled to get the decretal amount from all or any of the judgement-debtors. No doubt there might have been some equities between the judgement-debtors *inter se*, but *prima facie* if any one of the judgement-debtors paid the entire amount he was entitled to contribution against the others, unless the latter pleaded and proved special circumstances which would render it inequitable that they should contribute to the satisfaction of the decree. In the present case the defendants neither pleaded or proved any such circumstances, and we think the courts below were bound to apply the general rule as to contribution. We allow the appeal, set aside the decrees of both the courts below and grant the plaintiffs a decree as claimed with interest at one per cent. per mensem. Future interest will be at the rate of six per cent per annum. The appellants will have their costs in all courts.

*Appeal allowed.*

Before Mr. Justice Piggott and Mr. Justice Walsh.

PIARI LAL (PETITIONER) v. HANIF-UN-NISSA BIBI AND ANOTHER

(OPPOSITE PARTIES)\*

*Civil Procedure Code (1908), section 144—Execution of decree—Decree reversed on appeal—Boni fide auction purchaser under original decree—Restitution.*

Restitution cannot be obtained under section 144 of the Code of Civil Procedure as against a *boni fide* purchaser for value at an auction sale held by a

\* First Appeal No. 172 of 1914, from a decree of Shams-ud-din Khan, Additional Subordinate Judge of Aligarh, dated the 31st of March, 1914.

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court which had jurisdiction to hold the same. *Rewa Mahton v. Ram Kishen Singh* (1), *Zain-ul-abdin Khan v. Muhammad Asghar Ali Khan* (2) and *Abbas Husain Khan v. Dilband Begam* (3) referred to.

THE facts of this case were as follows :—

Musammât Faiz-un-nisâa filed a suit against Musammât Hanif-un-nisâa, Bashir-un-nisâa and Muhammad Ibrahim Ali Khan and others for a declaration that the sale-deed, dated the 27th of September, 1889, executed by her in favour of the defendants was null and void. She prayed for possession also. On the 5th of November, 1902, the suit was dismissed by the Subordinate Judge of Aligarh, but was decreed by the High Court on the 17th of April, 1905. The decree-holder sold this decree to Bansidhar on the 22nd of November, 1905, for Rs. 40,000. He executed the decree and recovered several items by the sale of different portions of the property and certain sums were paid up by the judgement-debtors themselves. The defendants appealed, and their Lordships of the Privy Council setting aside that decree, remanded the suit, and thereupon, on the 8th of May, 1912, the High Court dismissed the suit, confirming the decree of the Subordinate Judge of the 5th of November, 1902.

The defendants Hanif-un-nisâa and Bashir-un-nisâa thereupon applied for execution of the decree of the 8th of May, 1912, claiming restoration of the money paid by them and of their property sold away. They made the auction-purchasers and Bansidhar's sureties also parties to the proceeding. Twelve objections were filed by Bansidhar, the sureties and the purchasers.

The court of first instance disallowed the objections.

This was an appeal by the purchaser at auction sale of part of the property the subject of the original sale-deed.

Mr. B. E. O'Connor, for the appellant.

Dr. S. M. Suliman, for the respondents.

At the first hearing the following issues were referred by the Court.

(1) Was Lala Piari Lal the real auction-purchaser or a *benamidar* for Lala Bansidhar ?

(2) Was Girwar Prasad the real auction-purchaser of the property in question or did he purchase nominally for his own

(1) (1886) L. L. R., 14 Cal., 13. (2) (1897) L. L. R., 10 All., 166.

(3) (1913) 16 Oudh Cases, 225.

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benefit and in reality with the intention of passing the property on to the decree-holder Bansidhar and was the transfer by Girwar Prasad in favour of Lekhraj in reality a transfer in favour of Bansidhar ?

On receipt of the findings the judgement of the Court was delivered by

PIGGOTT and WALSH, JJ.:—The finding on the issues remitted by us in our order of the 29th of May, 1915, is in favour of the appellant. We must now take the facts to be substantially these :—Certain property was put up for sale in the execution of a decree by one Bansidhar, who was a transferee of that decree. As regards the particular property in question in this appeal, it was purchased at auction by the appellant Lala Piari Lal. On the findings now returned, which have not been seriously assailed in argument before us, and which we must accept upon the evidence, we hold that Lala Piari Lal was a *bona fide* auction-purchaser for value. The decree under execution at the instance of Bansidhar has been reversed on appeal, and the question before us is whether the judgement-debtors can obtain restitution, not merely as against Bansidhar himself (this they have already obtained) but against Lala Piari Lal. We have been referred to a large number of authorities on this point, but it really seems unnecessary to go beyond the two decisions of their Lordships of the Privy Council, in *Rewa Mahton v. Ram Kishen Singh* (1) and *Zain-ul-abdin Khan v. Muhammad Asghar Ali Khan* (2). The precise question now in issue was argued out before a Bench of the Judicial Commissioner's Court at Lucknow of which one of us was at the time a member. The case is that of *Mazhat ud-daula Abbas Husain Khan v. Dilband Begam* (3). Numerous authorities are there referred to, and the conclusion arrived at is that restitution cannot be obtained under section 144 of the Code of Civil Procedure as against a *bona fide* purchaser for value at an auction sale held by a court which had jurisdiction to hold the same. This appeal must therefore succeed. We set aside the order of the court below and direct that the appellant be restored to possession of the property which has been made over to the

(1) (1888) I. L. R., 14 Calc., 18.

(2) (1887) I. L. R., 10 All., 166.

(3) (1913) 16 Oudh Cases, 225.

respondents under the order appealed from. The appellant will get her costs in both courts.

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*Appeal allowed.*

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## FULL BENCH.

*Before Sir Henry Richards, Knight, Chief Justice, Mr. Justice Tudball,  
and Mr. Justice Muhammad Rafiq.*

SHAMBHU SINGH (PLAINTIFF) v. DALJIT SINGH AND OTHERS  
(DEFENDANTS).\*

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*February, 17.*

*Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233,  
clause (k)—Civil and Revenue Courts—Jurisdiction—Partition—Land  
of a third party alleged to be wrongly included in a pattā formed by im-  
perfect partition—Suit for recovery of possession in Civil Court.*

Where land belonging to one *pattā* was, apparently by mistake and without notice to the person who claimed to be the rightful owner thereof, included in another *pattā* and made the subject of an imperfect partition, it was held that the person who claimed to be the owner of the land so dealt with was not debarred by section 233 (k) of the United Provinces Land Revenue Act, 1901, from suing in the Civil Court to have his right to the land declared and to recover possession thereof. *Muhammad ḡ Sadiq v. Laute Ram* (1) distinguished.

*Quære* whether section 233 (k) of the United Provinces Land Revenue Act, 1901, applies at all to an imperfect partition.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are set forth in the judgement under appeal, which was as follows:—

“The question for determination in this appeal is whether this suit was barred by the provisions of sections 233 (k) of the United Provinces Land Revenue Act, Local Act No. III of 1901. According to that section the Civil Court is debarred from taking cognizance of any suit with regard to partition or union of mahals. The section itself is drawn up in broad terms and it has been applied broadly by this Court ever since the Full Bench decision in *Muhammad Sadiq v. Laute Ram* (1). That decision was under the former Land Revenue Act No. XIX of 1873, the wording of which differed somewhat. The provisions of section 233 (k) as they now stand, were considered by two Judges of this Court in *Lachman Das v. Hanuman Prasad* (2). I understand that ruling as laying down the broad principle that where there has been a partition of a certain mahal by a Revenue Court, resulting in a certain distribution of the lands of that mahal being effected, if any error has been

\* Appeal No. 94 of 1915, under section 10 of the Letters Patent.

(1) (1901) I. L. R., 28 All., 291. (2) (1910) I. L. R., 33 All., 269.