

## REVISIONAL CIVIL.

1917  
July, 25.

*Before Justice Si. Pramada Charan Banerji and Mr. Justice Tudball.*  
BUDDHU MISIR AND OTHERS (DECREE-HOLDERS) v. BHAGIRATHI KUNWAR  
(JUDGMENT-DEBTOR)\*

*Civil Procedure Code (1908), order XXI, rule 95—Execution of decree—Transferee from auction-purchaser—Order for delivery of possession—Appeal—Revision.*

A purchased certain immovable property at an auction sale held in execution of a decree and thereafter transferred the property so purchased to B, the decree-holder. B applied under order XXI, rule 95, of the Code of Civil Procedure for an order for delivery of possession of the property purchased from A, and an order was passed. Held that no appeal lay from the order for delivery of possession. *Bhagwati v. Banwari Lal* (1) referred to.

THE facts of this case were follows :—

Buddhu Misir and others held a decree against Musammat Bhagirathi. In execution of that decree certain immovable property of Musammat Bhagirathi was sold and purchased by one Sukh Narain Lal, a third party. The auction-purchaser, the said Sukh Narain, subsequently sold the property by a private deed to Buddhu Misir and others, the decree-holders. The decree-holders then applied under order XXI, rule 95, of the Code of Civil Procedure, to be put in possession of the property. The auction-purchaser vendor, Sukh Narain Lal, admitted the sale-deed in favour of the decree-holder and supported the latter's application. The judgement-debtor objected on the ground that order XXI, rule 95, applied only to an auction-purchaser and a subsequent vendee by private treaty from the auction-purchaser could not apply under that rule. The court of first instance overruled the objection and directed possession to be delivered to the decree-holders. On appeal by the judgement-debtor, the District Judge reversed the order of the Munsif, holding that the auction-purchaser alone could apply to be put in possession under order XXI, rule 95, remarking, "the law even prohibits purchase at an auction sale in the name of another. If the vendee of Sukh Narain were given the aid of the court, the provision of the law just referred to would be defeated." He also held that section 146 of the Code

---

\* Civil Revision No. 65 of 1917.

(1) (1908) I. L. R., 31 All., 82.

had no application to the case. He was of opinion that section 146 "was enacted merely because a representative had no remedy under section 108 of the old Civil Procedure Code." He further observed, "there being a special provision in order XXI, rule 95, about possession being delivered only to the auction-purchaser, section 146 does not apply to this case." The decree-holders filed a second appeal as well as applied in revision against the order of the District Judge.

The Hon'ble Dr. *Tej Bahadur Sapru* (with *Batu Kamla Kant Varma*), for the applicants :—

The District Judge has entirely misunderstood section 146 and order XXI, rule 95, of the Code. The decree-holders, having purchased the property from the auction-purchaser, are, as his representatives, clearly entitled to apply under order XXI, rule 95, read with section 146.

Besides, no appeal lay to the District Judge in this case; *Bhagwati v. Banwari Lal* (1). If no appeal lay to the District Judge, his order made on the judgement-debtor's appeal, is without jurisdiction, and I am entitled to come up to this Court in revision. If the District Judge's order is not *ultra vires*, then I submit that the view of the law taken by him is incorrect and my appeal should be allowed on that ground.

Mr. *Abdul Raof*, for the respondent :—

The second appeal does not lie, because there is no appeal from an order under order XXI, rule 95, which corresponds to section 318 of the old Code. As for the revision, the appellants have a remedy by suit, and it has been repeatedly held that where another remedy is available, this Court will not interfere in revision. It is, therefore, submitted that the application in revision, should not be entertained.

Dr. *Tej Bahadur Sapru* was not called upon to reply, but referred to *Ram Narain v. Muhammad Shah* (2).

BANERJI and TUDBALL, JJ. :—The facts out of which this application for revision arises are these :—In execution of a decree held by *Buddhu Misir* and others, the present applicants, the property of the judgement-debtor was sold by auction and was purchased by one *Sukh Narain*. The auction-purchaser sold the property purchased

(1) (1908) 1. L. R., 31 All., 32. (2) (1914) 12 A. L. J., 699.

1917

---

BUDDHU  
MISIR  
v.  
BHAGIRATHI  
KUNWAR.

1917

BUDDHU  
MISIR  
v.  
BHAGIRATHI  
KUNWAR.

by him to the decree-holders. The decree-holders purchasers applied for delivery of possession under order XXI, rule 95, of the Code of Civil Procedure. The court of first instance granted their application. An appeal was preferred to the District Judge and he held that the applicants for possession, who were purchasers from the auction-purchaser, were not entitled to make an application under order XXI, rule 95, and accordingly set aside the order of the court of first instance. From this order of the learned District Judge the present application for revision has been preferred, and it is contended that the learned Judge had no jurisdiction to entertain an appeal from the order of the court of first instance. The contention is fully supported by the ruling of the Full Bench in the case of *Bhugwati v. Banwari Lal* (1). That was, no doubt, a case under section 318 of the Code of Civil Procedure of 1882; but the place of that section has been taken by order XXI, rule 95, of the present Code. It is clear, therefore, that the court below acted without jurisdiction in entertaining an appeal from the order of the court of first instance. Moreover, in our opinion, in view of the language of section 146 of the Code of Civil Procedure, the applicants were entitled to maintain their application though they were transferees from the auction-purchaser and were not themselves the auction-purchasers. On behalf of the opposite party we are asked not to interfere, as it is the practice of this Court not to exercise its powers of revision in cases in which another remedy is open to the applicant, that remedy being a suit for possession. No doubt ordinarily this Court would not interfere in revision in a case where a remedy is open to a party. But, as observed in *Ram Narain v. Muhammad Shah* (2), each case must be judged upon its peculiar circumstances. In the present case there were no complicated questions of fact or law, and the applicants were clearly entitled to obtain possession by virtue of their purchase from the auction-purchaser. We allow the application, set aside the order of the court below, and restore that of the court of first instance with costs in all courts.

*Application allowed*

(1) (1908) I. L. R., 31 All., 83.

1914) 12 A. L. J., 899.