

Before Mr. Justice Piggott and Mr. Justice Walsh.

KHALIL-UR-RAHMAN (OBJECTOR) v. GOKUL PRASAD (DECREE-HOLDER).^{*}
*Civil Procedure Code (1909), section 65—Execution of decree—Purchase by
 decree-holder—Interest—Time when decree is satisfied—Confirmation of
 sale.*

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A decree, the satisfaction of which has resulted from the decree-holder himself bidding the full amount of the same at the execution sale, is not actually satisfied until the sale has been confirmed. If, therefore, the decree carries interest, the decree-holder is entitled to claim interest between the date of the sale and the date of its confirmation. *Ganesh v Purshottam* (1), referred to.

THE facts of this case are fully stated in the judgment of the Court.

Munshi Girdhari Lal Agarwala, for the appellant.

Babu Piari Lal Banerji, for the respondent.

PIGGOTT and WALSH, JJ. :—This is an appeal by a judgment-debtor in an execution case. It is sufficient to say that a mortgage decree for a very large sum of money was passed and that under this decree the property of the judgment-debtor in four villages was ordered to be sold. There were certain objections raised in the course of the preparation of the sale proclamation and the judgment-debtor, being dissatisfied with the decision of the execution court on these points, filed an appeal to this Court, which was registered as Execution First Appeal No. 329 of 1917, and disposed of on the 21st of May, 1918. During the pendency of this appeal the sale of one of the properties in question, namely, the right of the judgment-debtor in a village called Dhoti, was ordered to be stayed for a time. The other three properties were sold and purchased by the decree-holder and by other outside auction-purchasers. The order for stay in respect of village Dhoti having been discharged, the decree-holder applied for the sale of that property also. Once again the judgment-debtor raised various objections regarding the sale proclamation proposed to be issued by the court and, these having been overruled, he has brought this present appeal. The property has in the meantime been sold for a substantial sum. After this appeal had been filed, that is

^{*} First Appeal No. 72 of 1918, from a decree of Ram Chandra Saksena, Additional Subordinate Judge of Moradabad, dated the 26th of January, 1918.

to say, on the 21st of May, 1918, the order of this Court on Execution First Appeal No. 329 of 1917, was passed, and by that order the appeal of Khalil-ur-Rahman, judgment-debtor, was dismissed, with the remark that the Court found no force whatever in the said appeal. In the meantime the rights of Khalil-ur-Rahman in the village of Dhoti have been brought to sale under a simple money-decree and have been purchased by one Makhan Lal, who is the appellant in another appeal now pending before us. Khalil-ur-Rahman, therefore, has no interest whatever in the property in the village of Dhoti, to which this appeal relates, and it is at least open to argument whether he has any *locus standi* to take objections to the sale proclamation or to maintain this present appeal. The most substantial point raised by him is as to the description of the property in the village of Dhoti entered in the sale proclamation. It will be more convenient to discuss this point in the connected appeal filed by Makhan Lal, but so far as Khalil-ur-Rahman is concerned, it is certainly concluded against him by the order of this Court on Execution First Appeal No. 329 of 1917. In that appeal the same identical point regarding the description of the share in village Dhoti in the sale proclamation was taken which it is sought to raise in the present appeal, and the Court overruled it, along with all the other pleas taken in the memorandum of appeal, as having no force whatever. Another point raised is as to the sum for which execution has been taken out. The decree-holder admitted that, by reason of the auction sales which had taken place prior to the sale of Dhoti, his decree had been so far satisfied that only a sum of Rs. 15,120-4-0 remained due. On this he claimed interest, as allowed by the decree itself, amounting to Rs. 327-9-0. These two items are not in dispute. The decree-holder, however, claimed a further sum of Rs. 320. This represents interest on the rest of the mortgage-debt for a period between the 22nd of July, 1917, and the 17th of September, 1917. The former of these dates is the date of the sale of the property of Khalil-ur-Rahman in villages Fazilpur and Shahjahanpur. The second of these dates is the date of the confirmation of the said sale. The proprietary rights in Shahjahanpur were purchased by an outsider, and, in view of the fact

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that the decree-holder was entitled to interest until realization, and that he could not have withdrawn the money from the court until the sale had been confirmed, he seems clearly entitled, as the court below has held, to his interest up to the date of confirmation of sale.

As regards the village Fazilpur, which was purchased by the decree-holder himself on a bid of Rs. 29,000, the position is not quite so clear. Presumably the interest due on Rs. 29,000, for the period between the 22nd of July, 1917, and the 17th of September, 1917, would amount to Rs. 265-13-4 and the objection which we have to determine must be taken to be limited to this amount. When the decree-holder bid at the auction sale up to the sum of Rs. 29,000, he in fact asked the court to record the satisfaction of his decree to that extent. But, as the court below has pointed out, satisfaction of the decree to that extent could not be entered until the sale had been confirmed. It is quite true that, under section 65 of the Code of Civil Procedure, the auction purchaser's title to property sold at a public auction dates back, once an order of confirmation has been passed, to the date on which the sale was held, but this does not seem to affect the question of the right vested in the decree-holder by reason of his being allowed interest until realization under the terms of his decree. The fact that a decree, the satisfaction of which has resulted from the decree-holder himself bidding the full amount of the same at the execution sale, is not actually satisfied until the sale has been confirmed, was pointed out by the learned Judges of the Bombay High Court in the case of *Ganesh v. Purshottam* (1) and was there made the *ratio decidendi* of an important question affecting the rights of decree-holders who had purchased under their own decree. The principle involved seems to be applicable to the present case also, and the decision of the court below on the point must be affirmed. For all these reasons we dismiss this appeal with costs.

Appeal dismissed.

(1) (1903) I. L. R., 33 Bom., 311 (316).