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engineer acting through spite against an enemy and keeping a road closed to cause injury to that enemy cannot be said to be acting in the conduct of his employment and in the interest of his master. No evidence to connect the members of the municipality or the executive officer with Mr. Mitra's act was forthcoming.

We accept the application and dismiss the respondent's suit with costs of both the courts.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth.

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 April, 7.

NAND KISHORE (DEFENDANT) v. BADAN SINGH
 (PLAINTIFF).*

Civil Procedure Code, section 70(1)—Execution of decree—Sale of ancestral property—Collector not competent to set aside sale when once it has been confirmed and the record re-transmitted to the civil court.

The Collector has no power to interfere with a sale or to set it aside after it has been confirmed and the decree re-transmitted to the civil court, though he can make any correction in the sale certificate to make it conform with the proclamation of sale, as a consequential or incidental exercise of the authority vested in him to grant a certificate of sale after the sale is confirmed.

Ragho Prasad v. Mewa Lal (1), and Prem Chand Dey v. Mokhoda Debi (2), referred to.

THE facts of this case are fully set forth in the judgement of KANHAIYA LAL, J.

Munshi Narain Prasad Ashthana, for the appellant.

Babu Piari Lal Banerji, for the respondent.

* Second Appeal No. 980 of 1923, from a decree of E. Bennet, District Judge of Agra, dated the 13th of March, 1923, confirming a decree of Harihar Prasad, Additional Subordinate Judge of Agra, dated the 19th of January, 1921.

(1) (1911) I.L.R., 34 All., 223. (2) (1890) I.L.R., 17 Calc., 699.

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KANHAIYA LAL, J.—In execution of a decree held by Nand Lal against Musammat Chanda Dei and Kameshri Singh, certain property was put up to sale as ancestral property belonging to the judgement-debtors, by the Collector. The sale was held on the 20th of November, 1916, and confirmed on the 2nd of January, 1917. The property was purchased by Badan Singh, who obtained a certificate of sale on the 4th of April, 1917, from the Collector, and in pursuance of that certificate of sale he subsequently obtained formal possession from the civil court on the 23rd of May, 1917.

When the auction-purchaser applied for the entry of his name in the revenue papers, the judgement-debtors filed an objection as to the nature or extent of the interest purchased by the auction-purchaser, and while that application was pending, the judgement-debtors made an application to the Collector, asking that the certificate of sale should be corrected, to bring it into conformity with the property actually sold, as specified in the proclamation of sale. The application was made on the 12th of June, 1917, long after the sale had been confirmed and formal possession delivered by the civil court to the auction-purchaser. The Collector, however, proceeded to inquire into the application and on the 18th of November, 1917, he passed an order setting aside the sale by reason of what he described as "grave confusion" in describing the property intended to be sold, and he directed a fresh sale to be held after ascertaining from the civil court whether the sale was to be effected in respect of the rights of the judgement-debtors in the said property as mortgagors, or as mortgagees, or both. At the same time he directed the stay of the mutation proceeding arising out of the previous sale.

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The validity of that order is challenged by the plaintiffs in the present suit and both the courts below have come to the conclusion that the order of the Collector, setting aside the sale, was without jurisdiction and that the sale of the 20th of November, 1916, gave a good title to the plaintiff.

The question for consideration in this appeal is whether the Collector had jurisdiction to set aside the sale after it had been confirmed by him and the proceedings had been re-transmitted to the civil court which had transferred the decree to him for execution. It is suggested on behalf of the defendants appellants that the Collector had power to review his previous order confirming the sale. But there is nothing in his order to suggest that he was exercising that power. On the other hand, the Collector, referring to the proceedings connected with the sale, pointed out that there had been some confusion in describing the property intended to be sold, and that the property had fetched in consequence an inadequate value, and he proceeded to hold that there was in consequence sufficient ground for interfering with the sale after the expiry of the ordinary period of objection.

Section 70(1) of the Code of Civil Procedure empowers the Local Government to make rules for the transmission of the decree for the sale of certain classes of property from the civil court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same and for re-transmitting the decree from the Collector to the court. It further empowers the Local Government to make rules for appeals from orders made by the Collector, or any gazetted subordinate of the Collector to whom the proceedings may have been transferred, to superior revenue authorities and also for revision by such superior

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revenue authorities. Sub-section (2) of section 70 goes on to provide that the power conferred by the rules made under the previous sub-section upon the Collector or upon any appellate or revisional authority, shall not be exercisable by the "court," implying thereby the court which had transmitted the decree for execution, or by any court in exercise of any appellate or revisional jurisdiction which it has with respect to the decrees or orders of such court. It does not prohibit a court from taking cognizance of a suit intended to question the validity of the exercise by the Collector of a jurisdiction which is not vested in him, for section 9 of the Code of Civil Procedure gives the civil courts jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. A suit in which a right to property is involved is a suit of a civil nature, and if the Collector had no jurisdiction to set aside the sale after he had confirmed it and re-transmitted the decree to the civil court, the validity of that order, so far as it affects the title vested in the auction-purchaser, can be legitimately questioned by the party concerned in the civil court.

The rules framed by the Local Government under section 70 of the Code of Civil Procedure provide that where a sale is held and confirmed by the Collector, the Collector shall, as soon as may be after the confirmation of the sale, re-transmit the decree and all papers received therewith to the court by which the decree was transmitted, together with a report of its proceedings and an account showing the monies realized under the decree and the sum available at the disposal of the court. It further lays down that all subsequent proceedings in connection with the decree and delivery of possession to the purchaser shall be taken under the

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orders of the court transmitting the decree for execution.

The Collector has no power left to interfere with the sale or to set it aside after it has been confirmed and the decree re-transmitted to the civil court, though he can make any correction in the sale certificate to make it conform with the proclamation of sale, if he is approached for the purpose, as a consequential or incidental exercise of the authority vested in him to grant a certificate of sale after the sale is confirmed. In *Ragho Prasad v. Mewa Lal* (1), it was held by their Lordships of the Privy Council that an order for sale passed without jurisdiction conveyed no property to the person declared to be the purchaser. On the same principle, a sale held by a court having no jurisdiction, in execution of a decree to sell property not situated within its territorial limits, was held, in *Prem Chand Dey v. Mokhoda Debi* (2), to be a nullity, and to convey no rights to the auction-purchaser.

It has been urged on behalf of the defendants appellants that an appeal had been filed from the order of the Collector setting aside the sale to the Commissioner and upon a reference by the Commissioner, the Board of Revenue decided to uphold the order passed by the Collector setting aside the sale. But if the order passed by the Collector was without jurisdiction, the fact that that order was upheld by the Board of Revenue would make no difference. The auction-purchaser is entitled to say that the order setting aside the sale was passed after the Collector had ceased to have any authority over the execution proceeding on the re-transmission of the decree to the civil court, and the title, which is vested in him under the certificate of sale after it was confirmed by the Collector, is a

(1) (1911) I.L.R., 34 All., 223.

(2) (1890) I.L.R., 17 Cal., 659.

good and subsisting title capable of being enforced through a competent court.

It appears that the judgement-debtors were originally mortgagees of the disputed property but had subsequently purchased the right, title and interest of four of the descendants of the original mortgagor and had thus acquired a portion of the equity of redemption. It does not appear what was the nature of the original interest proclaimed for sale, and whether the property described in the certificate of sale corresponded with the property which was mentioned in the proclamation of sale. The certificate of sale describes the properties sold as the right, title and interest which the judgement-debtors had acquired by the purchase of the equity of redemption from the four persons aforesaid and it purports to include the mortgagee rights which the judgement-debtors held in those properties, and which had merged in the equity of redemption when the judgement-debtors purchased the same. The rights of the parties to the sale proceedings are determined by the certificate of sale, which finally vests the property in the auction-purchaser, and subject to any mistakes in the certificate of sale, which it is always open to the court or officer granting the certificate of sale to correct, the title so acquired cannot be afterwards disturbed in any subsequent proceeding at the instance of any person who was a party to the confirmation of the sale. The appeal, therefore, fails and is dismissed with costs.

ASHWORTH, J.—I concur. There can be no question that the Collector's order, in setting aside the sale after he had confirmed it, was *ultra vires*. Nor will the fact that the order of the Collector was upheld in appeal and revision in higher courts of revenue, render it binding on a civil court, in a suit for declaration as to proprietary title. The jurisdiction of the

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civil court is only affected by action of the Collector within the scope of the authority conferred upon him by section 70 of the Civil Procedure Code, and the rules made under that section.

Appeal dismissed.

Before Mr. Justice Kanhaiya Lal and Mr. Justice Ashworth.

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April, 8.

RAJA RAM (PLAINTIFF) v. CHHADAMMI LAL (DEFENDANT).*

Civil Procedure Code, section 47—Mortgage—Prior and subsequent incumbrances—Suit by first mortgagee—Second mortgagee made a party and then exempted—Suit for sale by second mortgagee not barred.

A prior mortgagee brought a suit for sale on his mortgage and impleaded a subsequent mortgagee as defendant. In the course of the suit, however, the counsel for the plaintiff stated that this second mortgage had been paid off, and, in spite of the denial of the puisne mortgagee that this was so, the court acted on that statement and exempted the puisne mortgagee, without trying that issue or the issues raised by him in the suit. A decree for sale was passed in favour of the plaintiff, and it was mentioned in the decree that the puisne mortgagee had been exempted from the suit. The puisne mortgagee thereafter brought a suit for sale on his mortgage.

Held that section 47 of the Code of Civil Procedure was not bar to such suit. *Vaddadi Sannamma v. Kodugantē Radhabhayi* (1), referred to.

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

Dr. Kailas Nath Katju, Mr. T. N. Chadha and Mr. L. M. Roy, for the appellant.

Babu Piari Lal Banerji and Munshi Panna Lal, for the respondents.

* Second Appeal No. 981 of 1923, from a decree of E. T. Thurston, District Judge of Budaun, dated the 16th of March, 1923, reversing a decree of Rup Kishan Agha, Subordinate Judge of Budaun, dated the 30th of November, 1922.