

finding that the objector did not submit to the jurisdiction of the court. This, in my opinion, is a finding of fact, in arriving at which no error of law can be attributed to him. I would content myself with deciding that part of the case on that finding.

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Another question which requires consideration is whether the objector, having once made payment, was estopped from questioning the jurisdiction of the court which passed the decree. No such question was raised in either of the two courts below. The plea of estoppel ordinarily rests on a question of fact, namely, whether the person sought to be estopped "intentionally caused or permitted another person to believe a thing to be true and to act upon such belief." In general the person pleading estoppel has to establish that in consequence of the representation or conduct of the person against whom estoppel is pleaded he was induced to act in a particular manner. In the absence of any plea and the evidence of the decree-holder it is not permissible to disallow the objection taken by the judgment-debtor to the jurisdiction of the court passing the decree.

*Namat-
ullah, J.*

With the foregoing observations I concur with my learned colleague in dismissing the appeal.

REVISIONAL CIVIL.

Before Sir Shah Muhammad Sulaiman, Acting Chief Justice, and Mr. Justice Bajpai.

NARAIN PAL SINGH (AUCTION PURCHASER) v. RUDRA BHAN SINGH AND OTHERS (DECREE-HOLDERS)*

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Civil Procedure Code, order XXI, rule 90—"Person whose interests are affected by the sale"—Holder of another decree who had attached in another court the property sold—Another decree-holder who had attached before judgment—Civil Procedure Code, section 64; order XXXVIII, rule 7.

The expression, "whose interests are affected by the sale", in order XXI, rule 90 of the Civil Procedure Code does

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not necessarily mean 'whose interest in the immovable property put up for sale is affected by the sale'. An attaching creditor has sufficient interest with reference to that property to come within that expression.

Where property was sold in execution of a decree of the Munsif's court, Benares, it was held that (1) a person who had got that property attached through the Subordinate Judge's court, Benares, in execution of his decree, and (2) the holder of a decree of another court who had got the property attached before judgment through the Subordinate Judge's court, Benares, and whose attachment was subsisting, both were persons "whose interests were affected by the sale" and who were therefore competent to apply under order XXI, rule 90 to have the sale set aside on the grounds mentioned therein.

Dr. *K. N. Katju* and Mr. *R. N. Basu*, for the applicant.

Mr. *P. L. Banerji*, for the opposite parties.

SULAIMAN, A. C. J., and BAJPAI, J. :—This is an application in revision from an order of the lower appellate court confirming an order of the first court setting aside on auction sale. The application under order XXI, rule 90 was not made by the decree-holder, judgment-debtor or the auction-purchaser, but was made by two persons Rudra Bhan Singh and Baij Nath Singh who claimed to be the other decree-holders. Both the courts below came to the conclusion that there had not been a proper proclamation of the sale and that in consequence the property which was worth about Rs. 15,000 was sold for Rs. 4,000 only. Being satisfied that there had been substantial loss incurred on account of the irregularity, they have set aside the sale.

The applicant, who is the auction-purchaser, applies for a revision of the order passed by the courts below on the ground that the courts had no jurisdiction to set aside the sale except on an application made by some one who came within the meaning of order XXI, rule 90. of the Civil Procedure Code and that the applicants did not come within the rule.

Under order XXI, rule 90 the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. It was held in the case of *Ravinandan Prasad v. Jagarnath Sahu* (1) that the expression "whose interests are affected by the sale" does not necessarily mean "whose interest in the immovable property put up for sale is affected by the sale", and the Calcutta High Court appears to have come round to the same view that the words are of a wider scope; *vide* the case of *Dhirendra Nath Roy v. Kamini Kumar Pal* (2).

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According to the objections filed in the court below it appears that the objectors claim that Rudra Bhan Singh had obtained a decree against the judgment-debtor Sri Saran Singh at Partabgarh and had obtained an attachment of the property at Benares before judgment. There is a possibility that under the procedure laid down in section 46 read with order XXXVIII, rule 7 of the Civil Procedure Code, attachment before judgment of the property situated in Benares might have been made and the original period of two months might have been subsequently extended; or attachment might have been made under section 136 of the Civil Procedure Code. If there had been a valid attachment subsisting at the time the decree was obtained by Rudra Bhan Singh, there would be no necessity for a fresh attachment and Rudra Bhan Singh might claim to be a decree-holder who had attached the property subsequently sold at auction.

The other objector Baij Nath alleged that he had obtained another decree at Partabgarh and had got its execution transferred to Benares and there got the property in question attached in execution from the court of the Subordinate Judge. Both Rudra Bhan Singh and Baij

(1) (1925) I.L.R., 47 All., 479.

(2) (1924) I.L.R., 51 Cal., 495.

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Nath Singh claimed to have attached the property from the court of the Subordinate Judge at Benares.

The sale which was sought to be set aside had taken place in pursuance of an execution ordered by the court of the Munsif at Benares.

If it were established that either Rudra Bhan Singh or Baij Nath Singh had validly attached the property subsequently sold, they would in our opinion come within the meaning of the expression "whose interests are affected by the sale". The attaching creditor has been given certain specific rights under section 64 of the Civil Procedure Code and all private transfers of the property subsequent to the attachment are void as against all claims enforceable under the attachment. No doubt the attachment does not create any title or charge on the property, but the creditor has sufficient interest with reference to that property, which may well be affected if an irregular sale takes place and he may well suffer substantial loss in consequence. The Calcutta case quoted above clearly laid down that an attaching creditor comes within that rule. We have no hesitation in accepting that view, as it is in accordance with the observations made in the case of *Ravinandan Prasad v. Jagarnath Sahu* (1).

It is not necessary for us to express an opinion whether a person who has merely attached the property before judgment and who has not yet obtained a decree would come within the meaning of that expression.

It may further be pointed out that if either Rudra Bhan Singh or Baij Nath Singh had properly got this property attached from the court of the Subordinate Judge at Benares they would also be persons entitled to share in the rateable distribution of the assets. Although the properties may have been attached by two different courts, nevertheless under section 63 of the Civil Procedure Code the court of the highest grade is

the court which shall receive all the assets realised. The sale by the Munsif might not be a nullity, but the assets when realised would have to be sent to the court of the Subordinate Judge. Admittedly these assets had not been received by the court of the Subordinate Judge, and therefore it was open to Rudra Bhan Singh or Baij Nath Singh, provided they had attached the property, to apply for rateable distribution under section 73 of the Civil Procedure Code. They would therefore come within this expression also. This is the view expressed by a learned Judge of the Madras High Court in the case of *Periya Karupan Chettiar v. Somasundaram Chetti* (1), with which we agree.

It is accordingly clear that the main point for consideration is whether Rudra Bhan Singh or Baij Nath Singh had got the property effectively attached before the sale took place.

[The Court then called for affidavits from both parties on this point.]

The applicant has not filed any affidavit and therefore is not in a position to contradict the statement made in the objection of Baij Nath Singh filed in the court below. On the other hand two affidavits have been filed on behalf of the respondents and they make out that the property had been attached and the attachment was subsisting at the time of the sale. In these circumstances, in view of the opinion expressed by us above, the objectors opposite parties had *locus standi* to get the sale set aside. The order of the court below was therefore right. We dismiss the application with costs.

(1) A.I.R., 1927 Mad., 67.

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