

A second question arises in this case owing to the fact that the *shahna* immediately made over the property to the judgment-debtors for threshing, and it is at least questionable whether it can be held that once the property was made over to the judgment-debtors for threshing, it can be said to be no longer in their possession but in that of the *shahna*. If the property is in their possession they could only be charged with refusing to return it, not with removing it, and such an offence is not contemplated by section 424 of the Indian Penal Code.

I accordingly allow this revision and set aside the conviction and sentence of all the applicants and direct that the fine, if paid, shall be returned to them. They need not surrender to their bail.

APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Kisch*

SHIAM LAL (OBJECTOR) *v.* JASWANT SINGH AND OTHERS
(OPPOSITE PARTIES)*

1932
October, 12

*Civil Procedure Code, order XXI, rule 90—Who can apply—
“Whose interests are affected by the sale”—Not necessary
that applicant must have interest in the property sold—
Interest may be pecuniary.*

A decree directed that two items of property were to be sold first, and if the sale proceeds were insufficient to satisfy the decretal amount, then the third item of property was to be sold. The two items of property were sold, but they fetched only a small price. A mortgagee of the third property applied under order XXI, rule 90 of the Civil Procedure Code for setting aside the sale on the ground of fraud. *Held* that the applicant was a person whose interests were affected by the sale, within the meaning of order XXI, rule 90, and so he had a *locus standi* to apply. Although he had no direct interest in the property which was sold, yet his interests would be

*First Appeal No. 194 of 1931, from an order of Ram Saran Das, Subordinate Judge of Aligarh, dated the 15th of September, 1931.

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adversely affected by the sale if it was for an unduly small price, caused by fraud.

Messrs. *S. K. Dar* and *S. N. Gupta*, for the appellant.

Messrs. *P. L. Banerji*, *Panna Lal*, *Shabd Saran* and *S. B. L. Gaur*, for the respondents.

SULAIMAN, C. J. and KISCH, J. :—This is an objector's appeal from an order refusing to set aside a sale. The application has been dismissed on the preliminary ground that the applicant has no *locus standi* to maintain it and the merits have not been gone into.

It appears that in the decree which is in execution there is a clear provision that two items of properties in Thok Net Ram and Thok Rup Singh should be sold in the first instance and that if the proceeds of these two properties prove insufficient to discharge the decree, then only the third property in Thok Ganga Ram should be sold. The appellant objector holds a mortgage over Thok Ganga Ram along with other properties. His case was that the auction sale which has taken place was fraudulent and collusive and the property which was of a high value had been sold for a small price, with the result that the decretal amount has not been discharged and his property has been ordered to be put up for sale.

The court below held that inasmuch as the property which has been sold did not belong to Shiam Lal and he had no interest in that property he has no *locus standi* to apply under order XXI, rule 90.

It seems to us that the scope of rule 90, sub-rule (1), is very wide and the words "whose interests are affected by the sale" are comprehensive enough to include the present appellant. There is no doubt that he has no direct interest in the property which has been sold, but if a fraud has been perpetrated and in collusion with the judgment-debtor and the decree-holder the property has been sold for a very small amount a

greater liability is cast on the property in Thok Ganga Ram over which the appellant holds a mortgage. His interests are therefore adversely affected by the sale and he would undoubtedly suffer by the alleged fraud or collusion. Our attention has been drawn to the case of *Bibi Mehdad-un-nissa v. Sheo Devi Singh* (1), which is in point. We agree with the view expressed therein and hold that the appellant is a person whose interests are affected by the sale inasmuch as his property may not be liable to be sold if without any fraud or collusion the full price is fetched by the sale of the other items, or at any rate the liability may be less than it is at present. We accordingly allow the appeal and setting aside the order of the court below send the case back to that court for disposal according to law. We direct that Shiam Lal should have his costs of this appeal from Mt. Phul Kuar the contesting respondent. The other respondents will bear their own costs. Costs incurred in the court below will abide the result.

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SHIAM LAL
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SINGH

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Kisch*

MANNU NAIK (APPLICANT) *v.* MATHURA PRASAD AND
OTHERS (OPPOSITE PARTY) *

1932
October, 14

Civil Procedure Code, order XXI, rule 89—Several properties sold in separate lots to different purchasers in execution of same decree—Application for setting aside the sale of one item on deposit of its price and five per cent. thereof—Sale price of the other items not received by decree-holder at date of application—Deposit insufficient—Application not maintainable.

Several items of mortgaged properties were sold in execution of a decree on the same day, but in separate lots and to different auction purchasers. The judgment-debtor applied under order XXI, rule 89 of the Civil Procedure Code for

*First Appeal No. 193 of 1931, from an order of C. Deb Banerji, Subordinate Judge of Azamgarh, dated the 29th of August, 1931.

(1) A.I.R., 1931 Pat., 217.