

not applicable to a loss accruing to the vendee by reason of his disqualification to buy. In this view of the case we must annul the decree of the lower appellate Court, restore that of the Munsif, and decree this appeal with costs.

*Appeal allowed.*

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GHULAM  
JILANI  
v.  
IMDAD  
HUSAIN.

## CIVIL JURISDICTION.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

IN THE MATTER OF THE PETITION OF BADRI PRASAD v. SARAN LAL  
AND ANOTHER.\*

*Execution of decree—Attachment of property in execution of decrees of two Courts—Postponement of sale by Court of higher grade—Sale of property under order of Court of lower grade—Invalidity of sale—Act X. of 1877 (Civil Procedure Code), ss. 285, 311.*

When several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the Court of the highest grade, where such Courts are of different grades, or the Court which first effectuated the attachment, where such Courts are of the same grade, is, under s. 235 of the Civil Procedure Code, the Court which has the power of deciding objections to the attachment, of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of providing for their distribution under s. 295.

*Held*, therefore, where the immoveable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree, and the rest a Subordinate Judge's decrees, and the Subordinate Judge postponed the sale of such property, but the Munsif refused to do so, and such property was sold in execution of the Munsif's decree, that the sale was void as having been been made in pursuance of the order of a Court which had no jurisdiction to direct it.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Pandit *Ajudhia Nath* and *Lala Harkishan Das*, for the petitioner.

The *Senior Government Pleader* (*Lala Juala Prasad*), *Pandit Bishambhar Nath*, and *Munshi Sukh Ram*, for the opposite parties.

The judgment of the Court (*STRAIGHT, J.*, and *OLDFIELD, J.*) was delivered by

*STRAIGHT, J.*—This is an application for revision under s. 622 of the Civil Procedure Code. It appears that three persons, *Badri Prasad*, *Gulab Chand*, and *Ajudhia Prasad*, severally held decrees

\* Application, No. 189 of 1881, for revision under s. 622 of Act X of 1877 of an order of *Maulvi Zahur Husain*, Munsif of *Aligarh*, dated the 3rd June, 1881.

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of the Court of the Subordinate Judge of Aligarh against one Moti Lal, which were in course of execution. There was also a fourth decree against the same judgment-debtor, which had been obtained by Ballabh Singh from the Court of the Munsif of the same place. Attachments of the immoveable property of Moti Lal had been made by both Courts, and notifications of sale issued. It appears that shortly before the date fixed by the Subordinate Judge for the auction, the judgment-debtor applied to him for a postponement of sale, and it was granted. He preferred a like application to the Munsif, who, however, refused to permit any further delay, and in execution of the decree of the Munsif's Court the property was sold on the 20th April, 1881, one Saran Lal being the purchaser. Thereupon Badri Prasad and Ajudhia Prasad, two of the decree-holders of the Subordinate Judge's Court, applied to the Munsif to set aside the sale on the ground that he was precluded from ordering it by the terms of s. 285 of the Procedure Code. This application was, however, refused, the Munsif holding that it was not competent for the applicants to make objection to the sale, they not being decree-holders of his Court, nor persons whose immoveable property had been sold, in other words, they not coming within the category of s. 311. Badri Prasad alone petitions this Court, and in substance asks us to revise the order of the Munsif, directing the sale of the 20th April, 1881, and to set the sale itself aside on the ground that it was held without jurisdiction. It will be observed that the application is based not upon material irregularity in the publishing or conducting the sale, but upon the ground that it was "*ab initio*" void by reason of the incompetence of the Munsif to order it. It may be doubtful whether the applicant could properly ask the Munsif to declare his own proceeding void, but as a person who has undoubtedly been most injuriously affected thereby, we think that he is fully entitled to come to this Court, and ask it to exercise its powers of revision under s. 622 of the Civil Procedure Code upon a question so essentially important as that of jurisdiction. The point then arises whether, having regard to the fact that there were three decrees of the Subordinate Judge's Court in respect of which the property of Moti Lal had been attached, as well as the one decree of his own Court, the Munsif, in face of the language of s. 285 of the Procedure Code,

was entitled to order the sale of the 20th April, 1881? We think not. It appears to us that when several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the law contemplates, no matter whether such Courts be of the same or different grades, that one Court and one Court only shall have the power of deciding objections to the attachment; of determining claims made to the property; of ordering the sale thereof, and receiving the proceeds, and of providing for their distribution under s. 295. Where the Courts are of different grades the one upon which this duty devolves is that of the highest grade; where they are of the same grade, that which first effectuated the attachment. We think that for the most obvious reason of convenience, and as a precaution against confusion in the execution of decrees, this is the proper construction to place on s. 285 of the Procedure Code. Seeing the notoriety that now has to be given to attachments it is in the highest degree improbable that one Court will be unaware of a prior subsequent attachment by another, and in the matter now before us it is admitted that the Munsif was well aware of all that had been done in reference to the three decrees of the Subordinate Judge's Court. In our opinion therefore the sale of the 20th April, 1881, was a bad sale, as being held in pursuance of the order of a Court that had no jurisdiction to direct it, and such order and sale must be, and are hereby, set aside.

This application is accordingly allowed, but we make no order as to costs.

*Application allowed.*

*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

PIRTHI PAL SINGH AND OTHERS (PLAINTIFFS) v. HUSAINI KHAN  
AND ANOTHER (DEFENDANTS). \*

*Muhammadan Law—Succession—Debts—Suit against one of the heirs of a deceased person for debt.*

The heirs to a deceased Muhammadan divided his estate among themselves according to their shares under the Muhammadan law of inheritance, a small debt being due from the estate at the time of division. Two of the heirs were subsequently sued for the whole of such debt. *Held that, inasmuch as such heirs had not, by sharing in the estate, rendered themselves liable for the whole of such debt, Muhammadan law allowing the heirs of a deceased person to divide his*

\* Reference No. 30 of 1882 under s. 617 of Act X of 1877.

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