

1882

SHAM LAL  
v.  
BAINA.

sal application, and has been recognized by this Court.—See *Heera Lal v. Kousillah* (1) and *Goolabee v. Ramtahal Rai* (2).

It may be added that, when the maintenance has been expressly charged on the purchased property, it will be liable, although it be shown that there is property in the hands of the heirs sufficient to meet the claim, but the property will not be liable if the transfer was made to satisfy a claim for which the ancestral property is liable by Hindu Law, and which under that law takes precedence of that of maintenance.

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## APPELLATE CIVIL.

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Before Mr. Justice Straight and Mr. Justice Tyrrell,

RAHCHANDAR BAHADUR (JUDGMENT-DEBTOR) v. KAMTA PRASAD  
(DECREE-HOLDER).\*

*Execution of decree—Time of sale—Irregularity in proclamation of sale—Act X. of 1877 (Civil Procedure Code), ss. 274, 289, 290, 311.*

*Held* that the fact of a sale of immoveable property in execution of a decree having taken place before thirty days from the proclamation of sale being made on the property had expired was not a material irregularity in the publication of the sale.

*Mohunt Megh Lal Pooree v. Shib Pershad Madi* (3) dissented from.

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

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), for the appellant.

Munshi *Hanuman Prasad*, for the respondent.

The following judgment was delivered by the Court (STRAIGHT, J. and TYRRELL, J.):

STRAIGHT, J.—This is a first appeal from an order refusing to set aside a sale on the ground of irregularity in its publication. The proclamation was fixed up in the Court-house on the 16th April, 1881, and posted at the spot, where the property was attached, on the 23rd of the same month, the sale being

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\* First Appeal, No. 133 of 1881, from an order of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 28th July, 1881.

(1) N.-W. P. H. C. Rep., 1867, p. 42. (2) N.-W. P. H. C. Rep., 1869, p. 191.  
(3) I. L. R. 7 Calc. 34.

held on the 20th May following. The judgment-debtor objected on the ground that it was allowed to take place before thirty days had expired from the date of the proclamation of sale being notified at the spot, where the property to be sold was situate. The Subordinate Judge disallowed the objection and the judgment-debtor now appeals. The contention of his learned pleader mainly rests upon a decision of a Division Bench of the Calcutta Court in *Mohunt Megh Mull Pooree v. Shib Pershad Madi* (1), in which it appears to have been ruled "that the proclamation of sale required by s. 274 of the Civil Procedure Code to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts, which *must precede* the posting of the notices in the Court-house as required by s. 290." We regret we are not prepared to follow this decision. The words of s. 290 that "no sale shall, without the consent of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, calculated from the date on which the copy of the proclamation has been fixed up in the Court-house" speak for themselves, and as far as our examination of the Code enables us to form an opinion, we find nothing to justify the conclusion, that the failure to post the proclamation of sale on the spot, where the property is attached, *prior* to the fixing up the copy in the Court-house, necessarily renders such latter proceeding ineffectual for the purposes of s. 290. It is true that s. 289 *first* mentions that the proclamation shall be made on the spot where the property is attached, and then goes on to provide for the fixing up the copy in the Court-house, but this seems to us to show that these several acts are to be done as nearly as possible contemporaneously, and not in any particular order. Certainly we do not feel ourselves justified in inferring from the language of this section that, if the sale proclamation has been stuck up on the spot, where the property is attached, *after* the copy has been exhibited in the Court-house, and within a less period than thirty days, that therefore there has necessarily been an irregularity in publishing the sale. The Court ordering the sale has the matter in its own hands, and in fixing the date thereof it must allow *at least thirty days* from the copy of the proclamation being fixed up in its own Court-house. In determining

(1) I. L. R. 7 Calc. 34.

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what the day shall be, it may well consider the distance at which the property to be sold is situate, and the length of time it would reasonably take its officer to get to the spot and put up the required notice there. Thus the Court itself can guard against any injustice being done to the judgment-debtor. Moreover if there is any difficulty on this head, the High Courts, under s. 287, can frame rules for the guidance of the subordinate tribunals in these matters which would effectually prevent any inconvenience or unreasonable delay.

In the case before us more than thirty days elapsed from the copy of the proclamation of sale being fixed up in the Court-house and the date of the sale. There does not therefore appear to us to have been any material irregularity, and affirming the decision of the Subordinate Judge, we dismiss the appeal with costs.

*Appeal dismissed.*

1880  
July 22.

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Oldfield.*

LEKHAJ SINGH AND OTHERS (DEFENDANTS) v. DULHMA KUAR AND OTHERS (PLAINTIFFS).\*

*Agreement to have case decided on the evidence of third person—Arbitration—Revocation of agreement—Act X of 1873 (Oaths Act), ss. 8-12—Act X of 1877 (Civil Procedure Code), Ch. XXXVII.*

The plaintiffs and some of the defendants in a suit agreed that the matters in difference between them in the suit should be decided in accordance with the statement made on oath by one J after he had made a local inquiry into such matters. The Court trying the suit accordingly directed that J should be examined on a certain day. Before J was examined the defendants objected to the case being decided in accordance with J's evidence, but the Court disallowed the objection, and having taken J's statement on oath decided the case in accordance therewith.

*Held* by STUART, C. J., that the provisions of ss. 8 to 12 of Act X of 1873 were not applicable to the reference of the case to J; that such reference was in the nature of a reference to arbitration under the Code of Civil Procedure; that it would have been valid and binding on the parties had all the defendants joined in it; but that, as all the defendants did not do so, the proceedings were illegal, and they should be set aside and the suit be decided on the merits.

*Held* by OLDFIELD, J., that the reference of the case to J was not made under or governed by the provisions of the Civil Procedure Code relating to arbitration, and therefore the defendants were competent to revoke the agreement; and that, assuming the reference was made under the provisions of the Oaths Act, there was

\* Second Appeal, No. 929 of 1879, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 21st May, 1879, affirming a decree of Paudit Jagat Narain, Subordinate Judge of Junpur, dated the 22nd March, 1878.