

1881

March 29.*Before Mr Justice Spankie and Mr. Justice Oldfield.*

MUNIR-UD-DIN KHAN AND ANOTHER (AUCTION-PURCHASERS) v. ABDUL RAHIM KHAN (DECREE-HOLDER).\*

*Sale in execution of decree of share of undivided estate—Confirmation of sale in favour of Co-sharer—Appeal by auction-purchaser—Act X. of 1877 (Civil Procedure Code), s. 310.*

A share of undivided immoveable property was put up for sale in execution of a decree, and was knocked down to *M*. Before it was knocked down to him *A*, the decree-holder, who had obtained permission to bid for and purchase such share, and who was a co-sharer of such share, bid the same sum as that for which it was knocked down to *M*, claiming the right of pre-emption. The Court executing such decree subsequently made an order confirming the sale of such share in favour of *A*. *M* appealed, impugning the propriety of the confirmation of the sale in favour of *A*. *Held* that such appeal would not lie.

THIS was an appeal from an order confirming a sale in execution of a decree in favour of the respondent. Certain shares of a certain undivided immoveable property were put up for sale in execution of a decree on the 21st November, 1879. Such shares were knocked down to the appellants for certain sums. Before they were knocked down to them, the respondent, the holder of the decree in execution of which such shares were being sold, and a co-sharer in such undivided immoveable property, advanced the same sums, and his bids were recorded by the officer conducting the sale. On the sale of the property the respondent filed a receipt for the purchase-money of the first sale, and as regards the purchase-money of the second sale conformed himself to the provisions of ss. 306 and 307 of Act X. of 1877. The appellants also carried out the provisions of those sections as regards the purchase-money of both sales. The respondent had obtained the permission of the Court executing the decree to bid for and purchase the property. The respondent subsequently claimed, under s. 310 of Act X. of 1877, that the sales of such shares should be confirmed in his favour. The appellants objected, claiming that the sales should be confirmed in their favour. The Court executing the decree allowed the application of the respondent, and disallowed the objections of the appellants, and made an order confirming the sales in favour of the respondent, having regard to the provisions of s. 310, Act X. of 1877.

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\*First Appeal, No. 161 of 1880, from an order of Maulvi Zain-ul-abdin Khan, Subordinate Judge of Sháhjáhánpur, dated the 28th June, 1880.

On appeal it was contended on behalf of the appellants that the order confirming the sales in favour of the respondent was illegal, inasmuch as the respondent as the holder of the decree, having obtained permission of the Court executing the decree to bid for and purchase the property in dispute, ought not to be allowed to take advantage of his right of pre-emption, but ought to take his chance with other bidders; and inasmuch as he had not carried out the provisions of ss. 306 and 307 of Act X. of 1877, as a pre-emptor could not be allowed to set off purchase-money against the amount of the decree.

Pandit *Nand Lal*, for the appellants.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Shah Asad Ali*, for the respondent.

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

*SPANKIE, J.*—It is very doubtful whether there was any appeal at all. Appellant is the auction-purchaser, so that he cannot be said to be appealing from an order under s. 244, Act X. of 1877. The sale was confirmed by the lower Court, but the appeal is not directed to any ground under paragraph I, s. 312, or s. 313, nor can it be regarded as an appeal from an order under s. 294, since the decree-holder had permission to bid though he did not purchase, but, after the purchase by appellant, claimed as pre-emptor under s. 310. The order is not appealable under cl. (16), s. 588, Act X. of 1877, and there is no appeal by that section against an order under s. 310. We dismiss the appeal and affirm the order with costs.

*Appeal dismissed.*

### FULL BENCH.

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

**BADAM (DEFENDANT) v. IMRAT AND ANOTHER (PLAINTIFFS).\***

*Remand under s. 562 of Act X of 1877 (Civil Procedure Code)—Extent of appeal from order of remand.*

An appeal from an order on appeal remanding a suit for re-trial is not to be confined to the question whether the remand has been made contrary to the

\* First Appeal. No. 116 of 1880 from an order of H. G. Keene, Esq., Judge of Meerut, dated the 22nd July, 1880.

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