

In our opinion, it was altogether incompetent for him to receive the money, or direct its payment to Hazari Lal. As to the further order dispossessing the mortgagee, it was quite erroneous and without jurisdiction. This application must, therefore, succeed, and the two orders of the Judge hereinbefore mentioned must be set aside. The applicant will receive his costs.

1881

HAZARI LAL
v
KHERU RAI

Application allowed.

APPELLATE CIVIL.

1881

March 26.

Before Mr. Justice Oldfield and Mr. Justice Straight.

RATI RAM AND ANOTHER (JUDGMENT-DEBTORS) v. CHIRANJI LAL
AND ANOTHER (OPPOSITE PARTIES).*

*Sale in execution of decree—Separate sales in execution of decrees—Act X of 1877
(Civil Procedure Code), s. 295.*

Application was made for execution of a decree for money against *R*, and also for execution of a decree for money against *R* and another person jointly and severally. Certain immoveable property belonging to *R* was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the amounts of both decrees. Such property was then sold a second time in execution of the second decree. *Held*, under these circumstances, that the second sale should be set aside, not being allowable with reference to the provisions of s. 295 of Act X of 1877.

ONE Tulsi Ram and one Karori Mal held a decree for Rs. 63-13-0 against one Rati Ram. One Chiranji Lal held another decree for Rs. 365-13-6 against Rati Ram and one Juala Singh jointly and severally. Rati Ram owned sixty-six bighas of land, and Juala Singh owned forty-five bighas; and the two persons owned 318 bighas in common. The whole of this property was separately attached and ordered to be put up for sale in execution of each of these decrees. The officer conducting the sales first put up to sale the sixty-six bighas of land belonging to Rati Ram and his interest in the land held by him and Juala Singh in common, in execution of the decree first mentioned, and the lot was knocked down for Rs. 435, a sum sufficient to satisfy both decrees. The officer then proceeded to put up for sale again in execution of Ohiranji Lal's

* First Appeal, No. 172 of 1880, from an order of Ahmad Husain Khan, Munsif of Nagina, in the District of Moradabad, dated the 19th July, 1880.

1881
 RATI RAM
 v.
 CHIRANJI
 LAL.

decree the property which had been already sold, and also the forty-five bighas of land belonging to Juala Singh and his interest in the land held by him and Rati Ram in common, and the lot fetched Rs. 140. Rati Ram and Juala Singh joined in preferring objections to this second sale, contending that, under the circumstances, a second sale was irregular, and they had been substantially injured by such irregularity. The Court executing the decrees held that the officer conducting the sales was bound to hold separate sales, and therefore had not acted irregularly in so doing. The judgment-debtors appealed to the High Court.

Munshi *Hanuman Prasad*, for the appellants.

Pandit *Bishambhar Nath* and Munshi *Sukh Ram*, for the respondents.

The judgment of the Court, after stating the facts, continued as follows :—

OLDFIELD, J. (STRAIGHT, J., concurring).—In my opinion, the second sale should be set aside. The re-sale of the property already sold in execution of the first decree is not allowable with reference to the provisions of s. 295, Civil Procedure Code, by which, whenever assets are realized by sale, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, such assets, after deducting the costs of the realization, shall be divided rateably among all such persons. Chiranji Lal held a decree for money against Rati Ram for the amount of which he and others were jointly and severally liable, and he had applied for execution against Rati Ram, and was entitled to share rateably in the assets realized by the first sale under s. 295 ; but the property of Rati Ram could not be again sold in satisfaction of his decree. That decree also could have been fully satisfied out of the assets realized by the first sale. I would decree the appeal with costs and set aside the sale.

Appeal allowed.