

1880
December 20.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

CHUNNI LAL AND OTHERS (JUDGMENT-DEBTORS) v. DEBI PRASAD AND ANOTHER
(AUCTION-PURCHASERS).*

Sale in Execution of Decrees of several Courts—Act X of 1877 (Civil Procedure Code), ss. 285, 311, 312.

Certain immoveable property was attached in execution of a decree made by a Subordinate Judge and also in execution of a decree made by a Munsif. These decrees were held by the same person and the judgment-debtor was the same person. Such property was sold in execution of both decrees. On the application of the judgment-debtor, who brought into court the amount due on the decree made by the Subordinate Judge, and with the consent of the decree-holder and the auction-purchaser, the Subordinate Judge made an illegal order setting aside such sale. Subsequently, on the application of the decree-holder and the auction-purchaser, the Munsif made an order confirming such sale.

Per SPANKIE, J.—That the Subordinate Judge had not any jurisdiction under s. 285 of the Civil Procedure Code to deal with such sale as regards the decree made by the Munsif, and the Munsif was not precluded by that section from confirming such sale as regards the decree made by him by reason that the Subordinate Judge, a Court of a higher grade, had made an order setting it aside.

Per OLDFIELD, J.—That, having regard to the provisions of that section, it was doubtful whether the Munsif was competent to confirm such sale; but, inasmuch as the Subordinate Judge only intended to set it aside as regards the decree made by him, and his order was illegal, and the Munsif's order had done substantial justice, there was no reason to interfere.

ON the 20th May, 1879, certain immoveable property was put up for sale in execution of two decrees. The holder of these decrees was the same person, and the judgment-debtors were the same. One of these decrees was made by the Subordinate Judge of Sháhjahánpur, and the other by the Munsif of East Budaun, Sháhjahánpur District. The property realized Rs. 1,350, and that amount was duly deposited by the auction-purchaser. The judgment-debtors applied to the Subordinate Judge to set aside the sale on the ground of irregularities in its conduct. They did not in this application make any reference to the decree made by the Munsif; nor did they then or at any time subsequently apply to the Munsif to have the sale set aside as regards the decree made by him. The judgment-debtors did not press the objections to the conduct of the sale which they had taken before the Subordinate

* First Appeal, No. 88 of 1880, from an order of Pandit Gopal Raj, Munsif of East Budaun, dated the 22nd November, 1879.

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Judge, but brought into court a sum of Rs. 1,327, which represented the amount due on the decree made by the Subordinate Judge, and interest on the purchase-money deposited by the auction-purchaser, and prayed that the sale might be set aside. The decree-holder and the auction-purchaser consented to the sale being set aside, and the Subordinate Judge set it aside, by an order dated the 22nd July, 1879. On the 29th July, 1879, the decree-holder applied to the Munsif that the sale might be confirmed as regards the decree made by the Munsif, and that the amount due on that decree might be paid to him out of the purchase-money. On the 19th November, 1879, the auction-purchaser also applied to the Munsif to have the sale confirmed. On the 22nd November, 1879, the judgment-debtors not having appeared, the Munsif, observing that the judgment-debtors had not objected to the sale, made an order confirming the sale, and directing that the amount due on the decree, Rs. 1,084-3-0, should be paid out of the purchase-money to the decree-holder, and the balance to the judgment-debtors. The judgment-debtors appealed to the High Court, contending, *inter alia*, with reference to s. 285 of Act. X. of 1877, that the Munsif was precluded from determining whether the sale should be confirmed or not, that matter having been previously determined by a superior Court:

Mr. *Chatterji* and Babu *Jogindro Nath Chaudhri*, for the appellants.

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

The Court (SPANKIE, J., and OLDFIELD, J.,) delivered the following judgments :

SPANKIE, J.—The rights and interests of the judgment-debtors in Mauza Majhia were sold on the 20th May, 1879, in execution of two decrees, one by the Subordinate Judge and the other by the Munsif of East Budaun. The former, on the application of the judgment-debtors, cancelled the sale in satisfaction of the decree in his Court. He pointed out certain irregularities in the conduct of the sale, and goes on to say: “Irrespective of irregularity and improper proceedings in the Revenue Court, there is another point de-

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servicing attention, *viz.*, that the present price is very low as compared with that fetched at the former sale (which had been set aside), *i. e.*, Rs. 1,905: the judgment-debtor, objector, had diligently brought and tendered in cash the whole amount of the decree due up to this date, the interest on the purchase-money deposited by the vendee, and the auction-fee, being Rs. 1,327, the entire amount due to the decree-holder and to the auction-purchaser." The decree-holder's pleader prayed that the money might be sent to the Treasury and said that he would summon his client and have the money paid to him. The auction-purchaser's pleader appears to have acquiesced in the Subordinate Judge's order cancelling the sale, and he too prayed that the money might be sent to the Treasury. The Subordinate Judge then records that, under the circumstances mentioned above, "the Court in equity and out of compassion is inclined to set aside the auction-sale objected to by the judgment-debtor; no sufficient reasons have been assigned by the auction-purchaser in the written and oral statements for rejecting the judgment-debtor's objections." The order dated 22nd July, 1879, sets aside the sale of the judgment-debtor's rights, and directs a refund to the auction-purchaser of the purchase-money deposited by him in the Revenue Treasury. There is no reference whatever in the Subordinate Judge's proceeding to the sale that had been ordered by the Munsif. The application for execution in the Munsif's Court had been made on the 21st March, 1879, a date prior to that for execution in the Subordinate Judge's Court. On the 29th July, after the Subordinate Judge had cancelled the sale in satisfaction of the decree of his Court, the decree-holder, who held *both* decrees, applied that the sale might be confirmed as regards the decree of the Munsif's Court, urging that the property had been sold in satisfaction of both decrees at one and the same time; that the judgment-debtor had paid up in full the decree of the Subordinate Judge's Court; that the property had been released to the judgment-debtor, but that the decree of the Munsif's Court remained still due. He therefore begged that out of the sale-proceeds the amount due to him as decree-holder might be paid. The auction-purchaser, Durga Prasad, on the 19th November prayed that the sale might be confirmed in his favour, urging that there

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had been no irregularities and he had deposited the purchase-money in the Collector's Treasury, where it had been for eight months: the judgment-debtor was cutting and appropriating the produce of the kharif crop: if the Court would not confirm the sale, he prayed that the purchase-money might be refunded with interest payable by the judgment-debtor, owing to whose act he neither obtained possession, nor holds it now. The judgment-debtor did not appear, nor did he urge any objection to the sale in satisfaction of the Munsif's decree; nor did he in his petition of objections in the Subordinate Judge's Court pray that it might be set aside as regards both decrees, nor does he even allude to the Munsif's decree. The Munsif, under these circumstances, on the 22nd November, four months after the Subordinate Judge's order, sums up the case as follows:—"Although the attachment of the property in execution of the decree of the Subordinate Judge's Court is of a date prior to the application for execution in this case, yet as the amount of that decree is paid up in full the aforesaid attachment cannot now be maintained, and since the defendants failed to set up any objection as to the irregularity of the proceeding, the present sale under the provisions of s. 312, Civil Procedure Code, is confirmed."

It is urged in appeal by the judgment-debtor (i) that the order of the Munsif is opposed to s. 13, Act X. of 1877, as the Subordinate Judge had already held the sale to be irregular, and had set it aside; and (ii) the order of the Subordinate Judge is the order of a superior Court, and, extending the principle of s. 285, Act X. of 1877, the Munsif was precluded from trying a matter that had been previously adjudicated by the superior Court. As regards the first plea, s. 13, Act X. of 1877, does not appear to apply at all. The Munsif was not trying any suit or issue within the meaning of that section: he was acting ministerially. No person had applied to his Court to set aside the sale on the ground of material irregularity in publishing or conducting the sale: as no such application as that mentioned in s. 311 had been made in the Court ordering the sale, the Court, under s. 312, was bound to confirm the sale. As to the second plea, the section cited (285) refers to attachments and forms one of the sections relating to attachment

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of property. It has no relationship with the sections of the Code which refer to sale and delivery of property. The section deals with the case in which property, *not in the custody* of any Court, has been attached in execution of decrees of more Courts than one, and it provides that the Court which shall receive or realize such property, and shall determine any claim thereto, and any objection to the attachment thereof, shall be the Court of highest grade, or where there is no difference in grade between such Courts, the Court under whose decree the property was first attached. We cannot extend this section in the direction of sales and delivery of property. The Court which receives or realizes property, property not in the custody of the Court, is to determine any claim thereto and any objection to its attachment, but there its authority ends. It deals with matters preceding sale, and no provisions appear to have been made for such a case as the present, when sale has been made and requires to be confirmed, and where in one Court the sale has been cancelled and in the other it has been confirmed. S. 295, to be sure, provides that, whenever assets are realized by *sale* or otherwise in execution of a decree, 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, the assets, after deducting the costs of the realization, shall be divided rateably amongst all such persons. This section, however, would seem to imply that the persons referred to must be decree-holders of the Court holding the assets, who, prior to the realization, have applied to the Court for execution of their decrees. There can be no such analogy as the appellant contends for on the strength of s. 285 of the Code. A decree can only be executed by the Court which passed it or by the Court to which it is sent for execution under the provisions of the Code and s. 223. The case before us does not fall within the provisions of s. 223. By s. 230 application for execution must be made to the Court which passed the decree or to the Court to which the decree has been sent for execution. The Court ordering a sale is the Court that made the decree and to which application for execution must be made. That Court alone can cancel or confirm the sale, as regards its own decree. The Subordinate Judge had

no jurisdiction to deal with the decree of another Court after sale in execution of that decree.

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The Subordinate Judge appears to have acted with material irregularity, if not illegally, in cancelling the sale in satisfaction of the decree of his own Court. The judgment-debtor did not press his objections against the sale, but paid the amount of the decree in full. It was not, under these circumstances, necessary to confirm or to cancel the sale, if, as I assume, both the decree-holder and auction-purchaser were content that it should not operate, so far as the decree of the Subordinate Judge's Court was concerned. A sale could only be set aside under ss. 311 and 313, but no sale can become absolute until it has been confirmed under s. 314. Again, if the judgment-debtor be understood to have been pressing his objection, inadequacy of price is not a sufficient reason for setting it aside. It was not shown from the judgment that the judgment-debtor had sustained a substantial injury by reason of the irregularity. But the strong point of the case seems to me to be that the Subordinate Judge has no jurisdiction in regard to a decree of another Court, and that, even if he was at liberty to cancel the sale, he could only do so as regards the decree in his own Court. I would not interfere but would dismiss the appeal with costs.

OLDFIELD, J.—I have had some difficulty as to the disposal of this case and doubt as to the legality of the Munsif's order. It may be that it was the intention of the provisions in s. 285, Civil Procedure Code, to give to one Court the disposal of questions relating to auction-sales when the sale has been made in execution of two or more decrees of different Courts. The section directs that, when property, not in the custody of any Court, has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property shall be the Court of highest grade. The words "realize such property" must mean realize by sale and may be intended to give the Court exclusive power in all matters connected with sales. The expediency of such a rule seems obvious, for otherwise we shall have different orders made by different Courts with reference to the same set of facts; objections allowed by one Court as to sales which have been disallowed by another; a sale confirmed by one and set aside by another

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Court; separate orders emanating from each Court for confirming a sale, with separate sale-certificates from each Court granted to the same auction-purchaser in regard to the same sale, each bearing different dates; and confusion of other kinds may occur. But however this may be, it is open to us to make a proper order in the case, and the Munsif's order has done substantial justice, and I am not disposed to interfere. The Subordinate Judge clearly intended only to deal with the sale so far as it affected his own decree, and his order for setting the sale aside, even so far as concerned his decree, was obviously illegal. I concur with my honorable colleague in dismissing the appeal with costs.

Appeal dismissed.

Before Mr. Justice Pearson and Mr. Justice Oldfield.

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SIA DASI AND OTHERS (DEFENDANTS) v. GUR SAHAI (PLAINTIFF).*

Hindu Widow—Alienation—Reversioner—Estoppel.

A Hindu widow in possession of her deceased husband's separate landed estate, her deceased husband's mistress and his illegitimate daughter, and the next reversioner to such estate, with the object of adjusting family disputes, entered into an arrangement by an instrument in writing for the distribution of such estate. A remoter reversioner to such estate was a witness to such instrument, and took a prominent part in making such arrangement, and the same had his full consent. *Held* that such remoter reversioner was estopped by such conduct from afterwards questioning the legality and genuine character of such distribution and the validity of assignments made by the persons who shared in such distribution.

Observations on the power of a remoter reversioner to question alienations by a Hindu widow in which the next reversioner has concurred.

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 Munshi *Sukh Ram*, for the appellants.

Mr. *Chatterji*, for the respondent.

The judgment of the High Court (PEARSON, J., and OLDFIELD, J.,) was delivered by

OLDFIELD, J.—The property in suit belonged to one Sidh Gopal, paternal uncle of plaintiff: Sidh Gopal died in 1857 and was succeeded by his widow, Sia Dasi. The next reversioner after the widow was Sheo Prasad, half brother of Sidh Gopal, and he, and Sia

* First Appeal, No. 21 of 1880, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 10th December, 1879.