

1883

MADHO
PRASAD
v.
HANSA KUAR.

lector, and for regulating the procedure of the Collector and his subordinates in executing the same and for re-transmitting the decree from the Collector to the Civil Court, and has prescribed rules accordingly which embrace rules for holding sales, and it is under these rules that the Collector's order confirming a sale is made and not under s. 312, which refers to orders by a Civil Court.

In fact there seems no doubt that it was the intention of the Legislature to exclude the jurisdiction of the Civil Courts in matters relating to the exercise by a Collector of the powers conferred on him for the execution of decrees transferred to him, under the sections of the Civil Procedure Code with which we are dealing. S. 325A is to the effect that so long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property or any part thereof any of the powers or duties conferred or imposed on him by ss. 322 to 325, both inclusive, no Civil Court shall issue any process against such property or part in execution of a decree for money, nor during the same period shall a Civil Court issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under s. 323.

We only cite these provisions as in some measure indicating the policy of the Legislature. There are also provisions which show that the Collector is made subject to the Chief Controlling Revenue Authority in the execution of his duties in the matter of Civil Court decrees transferred to him for execution (s. 323).

Our answer to these references is therefore that an appeal⁷ will not lie to the High Court from the orders of the Collector in the cases referred.

1883
January 31.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

INTIZAM ALI KHAN AND ANOTHER (JUDGMENT-DEBTORS) v. NARAIN SINGH
(PURCHASER).*

Sale in execution of decree—Civil Procedure Code, s. 306—Failure to pay deposit of purchase-money required by that section.

The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay

⁷ First Appeal No. 104 of 1882, from an order of Pandit Jagat Narain, Subordinate Judge of Farukhabad, dated the 29th May, 1882.

a deposit of twenty-five per centum on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property.

THIS was an appeal from an order refusing to set aside a sale of certain immoveable property in execution of decrees. The judgment debtors had applied to have the sale set aside on the ground, amongst others, that the purchaser had not made the deposit required by s. 306 of the Civil Procedure Code on being declared to be the purchaser, and the property should therefore have been put up for sale again, instead of which the purchaser was allowed to make such deposit on a day subsequent to the day of the sale, and the sale was in consequence invalid. The Court of first instance held that the failure of the officer conducting the sale to carry out the provisions of s. 306 did not invalidate the sale, and rejected the application to set aside the sale. The judgment-debtors appealed to the High Court, again contending that the sale was bad, by reason that the provisions of s. 306 had not been carried out.

Mr. Conlan and Babu Beni Prasad, for the appellants.

Pandit Ajudhia Nath and Munshi Sukh Ram, for the respondent.

The Court (STUART, C.J., and TYRRELL, J.) delivered the following

JUDGMENT.—The sale impugned by this appeal was not bad by reason of an irregularity in publishing or conducting the sale. But it was no sale at all, inasmuch as the indispensable conditions of the law, as contained in s. 306 of the Civil Procedure Code, were not fulfilled by the person declared to be the purchaser. The sale took place early in the afternoon of the 20th April, 1882, and the respondent did not pay a deposit of twenty-five per centum on the amount of his purchase immediately after the declaration that he was the purchaser. On the contrary the deposit was not tendered on the 20th April, but on a subsequent date. In default of such deposit the property should have been forthwith put up again and sold. The order of the Court below confirming the sale was therefore wrong and must be set aside. We cancel that order and decree this appeal with costs.

Appeal allowed.

1883

INTIZAM ALI
v.
NARAIN
SINGH.