

1882
July 6 & 13.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BISHESHAR KUAR AND OTHERS (PRE-EMPTORS) v. HARI SINGH AND
OTHERS (AUCTION-PURCHASERS)*

High Court's powers of revision—Sale in execution—Pre-emption—Civil Procedure Code, ss. 310, 311, 622—Locus standi of pre-emptor in execution proceedings.

A person claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale, and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed.

THIS was an application for revision under s. 622 of the Civil Procedure Code of an order of the Munsif of Ballia, dated the 1st March, 1882, confirming a sale of immoveable property in execution of a decree. The application was made by Bisheshar Kuar and certain other persons. These persons had objected in the Munsif's Court to the confirmation of the sale on the ground that they, being co-sharers with the judgment-debtor in the property, and having bid as high as Hari Singh and certain other persons to whom the property had been knocked down, had, under s. 310 of the Civil Procedure Code, a preferential right to be declared the purchasers. The Munsif disallowed the objection and confirmed the sale.

Mr. Conlan, for the applicants (pre-emptors).

Mr. Hill and Lala Lalta Prasad, for the auction-purchasers.

Mr. Hill, for the auction-purchasers, objected to the application being entertained on the ground (i) that the applicants were not persons mentioned in s. 311 of the Civil Procedure Code who could

* Application No. 44 of 1881, for revision under s. 622 of the Civil Procedure Code of an order of Munshi Kulwant Prasad, Munsif of Ballia, dated the 1st March, 1882.

apply to have a sale set aside, and therefore had no *locus standi* in the proceedings in the execution department; and (ii) that, as an appeal is given by s. 588 of the Code of Civil Procedure to decree-holders, judgment-debtors, and auction-purchasers against orders passed under the first paragraph of s. 312, and under s. 313, the provisions of s. 622 were not applicable, because they had reference only to cases in which an appeal did not lie to the High Court.

The Court (STRAIGHT and TYRRELL, JJ.) made the following order in respect of the preliminary objection taken on behalf of the auction-purchasers :—

STRAIGHT, J.—The first of these contentions does not appear to us to have any force. The powers of revision given to us are very wide, and we can of our own motion call for any record under s. 622, if it appears to us desirable so to do. With the merits of the present application we are not for a moment dealing; but this is clear, that though the applicant did not fall within the category of persons mentioned in s. 311 of the Code, he was allowed to file objections to the confirmation of the sale in the execution department, and was treated as a party to the proceeding held therein. So far therefore we think it was competent for him to set this Court in motion to exercise its powers under s. 622. The second point urged by Mr. Hill at first sight presents difficulties, for the limitation of the operation of s. 622 to cases in which no appeal lies to the High Court is distinct enough. But in the matter before us neither the decree-holder, the judgment-debtor, nor the auction-purchaser is dissatisfied with the sale, and the only persons therefore who could appeal have not done so. It accordingly comes to this, that *quoad* the applicant the case to be revised is one in which he has no appeal to the High Court, and under these circumstances we think ourselves justified in holding that it is competent for him to apply for revision. In expressing this opinion it must be understood that we in no way determine the question of the *locus standi* of the applicant in the execution proceeding, or any of the other points to be discussed upon the hearing, which will now proceed.

At the further hearing of the application Mr. Hill contended that the applicants were not competent to apply, under s. 311 of

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the Civil Procedure Code, to have the sale set aside, but their remedy, if they had any, was by a regular suit.

The Court (STRAIGHT and TYRRELL, JJ) delivered the following judgment:—

STRAIGHT, J.—The applicant in our opinion, not being either the decree-holder or a person whose immoveable property had been sold, was not competent to avail himself of the provisions of s. 311 of the Procedure Code with a view to obtaining an order in the execution department, setting the sale aside on the ground that he, and not the persons recorded by the officer conducting the sale, was the auction purchaser. Under these circumstances he had no *locus standi* to justify his preferring the application to the Munsif and this petition for revision must be dismissed with costs.

Application rejected.

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July 12.

APPELLATE CIVIL.

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

MAYA RAM AND OTHERS (DEFENDANTS) v. PRAG DAT AND ANOTHER
(PLAINTIFFS).*

Specific performance of contract—Suit for execution of fresh instrument—Act I of 1877 (Specific Relief Act), ss. 12, 21, 22—Lost instrument, suit to restore terms of

The plaintiffs, alleging that the defendants, having executed in their favour and delivered to them a bond, the consideration for which was money due to them for rent of land and on a former bond, had received it back for registration, and, refusing to register it, had retained it, sued the defendants to have a similar bond executed and registered.

PER MAHMOOD, J.—That it was doubtful whether the suit could be regarded as a suit for specific performance of a contract, and whether the only remedy open to the plaintiffs was not a suit for the money. It was only on the hypothesis that the mere writing of the original bond, in the absence of registration and final delivery, did not amount to a performance of the contract, that the suit was entertainable at all.

That, assuming the suit to be one for specific performance of a contract, the plaintiffs were not entitled to the specific relief which they sought, since they could obtain their full remedy by suing for the money in respect of which the

* Second Appeal No. 177 of 1882, from a decree of H. A. Harrison, Esq., Judge of Parakhabad, dated the 10th January, 1882 affirming a decree of Maulvi Abdul Ba it, Munsif of Chibraman, dated the 17th September, 1881.