

under this construction of that section, nor do we think that any instructions, either in writing or otherwise, or either general or in regard to specific acts, are necessary, the Deputy Commissioner being clothed with all the powers of the Commissioner, subject only to what I have said. That, we think, is the only reasonable construction to be given to the Act. Any other construction would place difficulties in the way of the Police, which, we think, the Legislature never intended. That being so, we think what we said above is a reasonable answer to the questions put to us.

H. T. H.

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APPELLATE CIVIL.

Before Mr. Justice Pigot and Mr. Justice Banerjee.

CHATTRAPAT SINGH (PETITIONER) v. JADUKUL PROSAD
 MUKERJEE AND OTHERS (OPPOSITE PARTIES).*

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 November 17.

Civil Procedure Code (Act XIV of 1882), ss. 295, 311—Rateable distribution of sale-proceeds—Sale in execution of decree—Execution proceedings—“Decree-holder.”

A person who is not entitled to come in under section 295 of the Civil Procedure Code and share in the distribution of the sale-proceeds, is not included within the term “decree-holder” in section 311, nor is he entitled to apply under that section to set aside the sale.

Deboli Nundun Sen v. Hart (1) and *Lakshmi v. Kuttunni* (2) referred to.

In this case the decree-holder, Chattrapat Singh, made an application to be allowed to come in and share in a rateable distribution of the sale-proceeds under section 295 of the Code of Civil Procedure, and also to have the sale set aside under section 311 of the Code, on the ground of irregularity in publishing and conducting it. There were a number of judgment-debtors in this case whose property had been sold by other decree-holders, but the decree of Chattrapat Singh was only against three of the judgment-debtors. The Subordinate Judge of Nuddea, on

* Appeal from Order No. 157 of 1892, against the order of Baboo Gopal Chunder Banerjee, Subordinate Judge of Nuddea, dated the 22nd of March 1892.

(1) I. L. R., 12 Calc., 294.

(2) I. L. R., 10 Mad., 57.

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the 19th March 1892, on the authority of *Deboki Nundun Sen v. Hart* (1), held that the decree-holder was not entitled to share in a rateable distribution of the sale-proceeds, nor was he entitled to apply to set aside the sale.

The decree-holder, Chattrapat Singh, appealed to the High Court.

Dr. *Rashbehari Ghose* and Baboo *Digamber Chatterjee* for the appellant.

Baboo *Mohini Mohun Roy* and Baboo *Harendronath Mitter* for the respondents.

The following cases were referred to during the arguments :—

Hart v. Deboki Nundun Sen (1), *Hury Doyal Guho v. Bin Dyal Guho* (2), *Shumbboo Nath Poddar v. Luckynath Dey* (3), *Lakshmi v. Kuttunni* (4), *The Delhi and London Bank v. The Uncovenanted Service Bank, Baricelly* (5), *Sorabji Edulji Warden v. Govindramji* (6), *Haftz Mahomed Ali Khan v. Damodar Pramanick* (7).

The judgment of the Court (PIGOT and BANERJEE, JJ.) was as follows :—

We think that this appeal must be dismissed. By an order made in this case the appellant was held to be not entitled to come in under section 295 and share in the rateable distribution of the sale-proceeds in this case. That order was made by the Subordinate Judge on the 19th of last March. Application was made to this Court to a Divisional Bench, of which one of the present Bench was a member, for a rule under section 622 for the purpose of having that order of the 19th of March reviewed; and inasmuch as that order was made in express and direct obedience to the decision of the Court in *Deboki Nundun Sen v. Hart* (1) referred to in it, we thought that a rule under section 622 ought not to be granted in respect of a decision of the lower Court clearly following the law as it stood upon the last decided case. The learned pleader for the appellant has asked us in this case, it being an appeal, to examine

(1) I. L. R., 12 Calc., 294.

(4) I. L. R., 10 Mad., 57.

(2) I. L. R., 9 Calc., 479.

(5) I. L. R., 10 All., 36.

(3) I. L. R., 9 Calc., 920.

(6) I. L. R., 16 Bom., 91.

(7) I. L. R., 18 Calc., 242.

the decision in *Deboki Nundun Sen v. Hart* (1),* arguing that it was not one which was wholly satisfactory. Upon this appeal that matter does not arise, because as between the parties in those proceedings the order of the 19th of March is final, and it finally decides that the appellant is not entitled to come in under section 295 for a rateable distribution. Not being entitled to do that, we think we must hold that he was not entitled, as he has sought to do in the present proceedings, to challenge the sale and to be heard for the purpose of setting it aside under section 311 of the Code. The case of *Lakshmi v. Kuttummi* (2) decides that a decree-holder who would be entitled to come in under section 295 is included within the term "decree-holder" in section 311. It is argued by Baboo Mohini Mohun Roy that that is an erroneous view of the section; but it is not necessary for us to follow the learned pleader in discussing that decision, because that decision certainly goes so far as this, *viz.*, that one who is not entitled to come in under section 295 certainly is not included within the words "decree-holder" in section 311. That, we think, is the fair conclusion to be derived from the opinion expressed by the learned Judges in that case, although the point was not actually decided in it. In any case, we are of opinion ourselves that outside of those entitled under section 295 to come in, the power of applying under section 311 certainly does not exist; and as the appellant is not such a person, he is not entitled to apply to set aside the sale under section 311.

The decision of the Court below is therefore right, and the appeal must be dismissed with costs.

Appeal dismissed.

A. F. M. A. R.

(1) I. L. R., 12 Calc., 294.

(2) I. L. R., 10 Mad., 57.

* "Of course only in contemplation of a possible reference to a Full Bench,—" *Note* inserted at the desire of the Judges of the Bench.

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