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WANDIN)
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in the year 1924, and a circular letter was issued to all Magistrates. It is to be regretted that this circular letter appears to have become dead, even although it was supplemented by a ruling reported in the *Oudh Law Journal*.

We are satisfied that the case has been fully proved against Bhagwandin and the sentence in this case must be one of death. We, therefore, dismiss this appeal, uphold the conviction and sentence and direct that Bhagwandin be hanged by the neck till he be dead.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.

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February 19.

LALA BAJRANGI LAL (DECREE-HOLDER-APPELLANT) v.
RAM HARAKH (RESPONDENT OPPOSITE PARTY).*

Civil Procedure Code (Act V of 1908), order XXI, rules 71 84, 85 86 and 87—Execution of decree—Decree-holder knowingly not getting a previous encumbrance mentioned in sale proclamation—Auction-purchaser refusing to deposit balance of sale money on knowing of the encumbrance—Re-sale and purchase by decree-holder—Auction-purchaser, whether liable for deficiency under order 21, rule 71 of the Code of Civil Procedure—Fraud—No person can be allowed to take advantage of his own fraud and wrong.

Where a decree-holder knew that there was a previous encumbrance on a property but did not get the encumbrance mentioned in the sale-proclamations and at the auction sale the property was sold and purchased by the respondent who deposited 25 per cent. of his bid at once but when he came to know of the encumbrance he did not deposit the balance and the property was re-sold and purchased by the decree-holder

*Execution of decree Appeal No. 75 of 1928, against the decree of Pandit Dwarka Prasad Shukla Subordinate Judge of Partabgarh dated the 9th of August, 1928, upholding the decree of Pandit Data Ram Misra, Munsif of Partabgarh, dated the 3rd of May, 1928.

himself for a smaller price who then applied for recovery of the deficiency of price under order XXI, rule 71 of the Code of Civil Procedure, held, that the decree-holder was guilty of fraud and his conduct was very objectionable and he could not, therefore, make the defaulting purchaser answerable for the deficiency for fraud vitiates and corrupts everything and no person can take advantage of his own wrong and gain advantage by his own fraud. *Bajjnath Sahai v. Moheep Narain Singh* (1), and *Kali Kishore Deb Sarkar v. Guru Prosad Sukul* (2), relied on. *Annavajhula Venkatachellamayya v. Rama Girjee Nilkanta Girjee* (3), distinguished.

Mr. *Radha Krishna*, for the appellant.

Mr. *Hardhian Chandra*, for the respondent.

MISRA and RAZA, JJ. :—This is a second appeal from an order of the Subordinate Judge, Partabgarh, dated the 9th of August, 1928, affirming an order of Munsif, Partabgarh, dated the 3rd of May, 1928, in execution proceedings.

The facts relevant to the appeal are as follows :—

Bajrangi Lal, appellant, held a decree against one Ramdin. The decree was passed on the basis of a mortgage. Some plots in village Paniari and some other plots in village Sahjanpur were to be sold in execution of the decree. Bajrangi Lal applied for the sale of the property in execution of the decree. The sale was fixed, the first time, for the 20th of January, 1926. No encumbrance was shown in the sale proclamation. The Paniari property was valued at Rs. 342-12-0 and the Sahjanpur property at Rs. 169-12-0. There were no bids on the 20th of January, 1926, and the sale was therefore postponed. The next date fixed for the sale was the 20th of March 1926. A fresh sale proclamation was issued and no encumbrance was shown in that proclamation also. It contained the same particulars as were given in the first sale proclamation. The property was sold on the 20th of March, 1926, in two lots. The

(1) (1889) I. L. R., 16 Calc., 535. (2) (1898) I. L. R., 25 Calc., 99.

(3) (1917) I. L. R., 41 Mad., 474.

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first lot was of Paniari property and the second lot, of Sahjanpur property. There is no dispute in this case about Sahjanpur property which was sold to Ram Harakh (respondent) for Rs. 405. The dispute in this case relates to the Paniari property only. There was competition between the decree-holder (appellant) and Ram Harakh (respondent) in respect of the first lot (i.e. Paniari property). The bids made by the decree-holder were pre-empted by Ram Harakh who was a co-sharer in the village Paniari. The last bid was of Rs. 1,000. Ram Harakh deposited twenty-five per cent. of the purchase money under order XXI, rule 84 of the Code of Civil Procedure. However he failed to deposit the full amount of the purchase money within fifteen days from the date of sale under order XXI, rule 85. The result was that the property was ordered to be re-sold and Ram Harakh, the defaulting purchaser, forfeited the amount deposited by him under order XXI, rule 84. A fresh proclamation for sale was issued under order XXI, rule 87 and it contained the same description of the Paniari property as noted in the previous proclamations. No encumbrance was shown in this sale proclamation also. The sale was fixed for the 20th of October, 1927. The judgment-debtor however applied for postponement of sale on that date. His application was granted and the sale was fixed for the 3rd of November, 1927. On that date the property was sold for Rs. 500 only and was purchased by the decree-holder himself at the auction sale.

The decree-holder having thus purchased the property applied on the 20th of January, 1928, for recovery of the deficiency of the price (Rs. 500), from the defaulting purchaser Ram Harakh, under order XXI, rule 71 of the Code of Civil Procedure.

This application was resisted by Ram Harakh on various grounds. He pleaded *inter alia* that the decree-holder was guilty of fraud in not having shown the prior

encumbrance of 1909 in the sale proclamation. He contended that the decree-holder being guilty of fraud could not take advantage of his own fraud.

We should like to note that the prior encumbrance of 1909 was a mortgage in favour of one Sita Ram for Rs. 50 in respect of certain property including the property in dispute. A suit was brought by Sita Ram on the basis of that mortgage on the 15th of December, 1921. The present decree-holder, Bajrangi Lal, was also a party to that suit. The claim was decreed for Rs. 600 odd in that suit on the 30th of March, 1922. Though Bajrangi Lal had full knowledge of this encumbrance, but he failed to show it in the sale proclamation which was issued in execution of his decree. His own agent filed an affidavit stating that the property in dispute was not subject to any encumbrance. This affidavit was of course a false affidavit.

The lower courts rejected the decree-holder's claim for deficiency of price on the ground that he was guilty of fraud and could not be allowed to take advantage of his own fraud.

Bajrangi Lal, decree-holder, has now come to this Court in second appeal.

We think there is no substance in this appeal.

The finding of the lower courts that the decree-holder is guilty of fraud in this matter is based upon admissible evidence and cannot be impugned in second appeal. There is no doubt that he is guilty of fraud and that his conduct is very objectionable. He got the sale proclamation issued without showing the encumbrance to which the property was subject. His own agent filed a false affidavit stating that the property was not subject to any encumbrance. He then competed with Ram

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Harakh (respondent) in bidding for the property at the auction sale and when the bids went up to Rs. 1,000 he cleverly withdrew and Ram Harakh became the auction-purchaser. Ram Harakh became the purchaser believing that the property was not subject to any encumbrance. It was the decree-holder (appellant) who caused Ram Harakh to believe that the property was not subject to any encumbrance. Ram Harakh deposited twenty-five per cent. of the purchase money, but when he came to know that the property was really subject to an encumbrance he did not deposit the balance. The amount deposited by him was forfeited to Government under order XXI, rule 86 of the Code of Civil Procedure. He thus suffered loss of Rs. 250, but avoided greater loss. The property was ordered to be re-sold and then the decree-holder himself purchased it for Rs. 500 only. After purchasing the property in this way, the decree-holder filed the present application on the 20th of January, 1928, for recovery of the deficiency of price under order XXI, rule 71 of the Code of Civil Procedure. We agree with the following observations made by the Hon'ble Judges of the Calcutta High Court in the case of *Baijnath Sahai v. Moheep Narain Singh* (1) :—

“After the decree-holder has succeeded in misleading the defaulting purchaser to bid a high price, by withholding information as to encumbrances which it was his duty to notify, if he were allowed to recover the deficiency of price at the re-sale, it would be allowing him to take advantage of his own neglect of duty. That would be so manifestly inequitable that we are unable to hold that the Legislature could have ever intended such a result.”

(1) (1889) I. L. R., 16 Calc., 535.

This case was followed in the case of *Kali Kishore Deb Sarkar v. Guru Prosad Sukul* (1). The following observations were made in the judgment in that case:—

“If there was a misdescription on the first occasion the decree-holder was aware of it, and he ought not to have had the property again proclaimed for sale under a description which he knew to be wrong. Having done that he cannot make the defaulting purchaser answerable for the deficiency.”

The appellant's learned Counsel has referred to the case of *Annabhula Venkatachellamayya v. Rama Girjee Nilkanta Girjee* (2). We think this case does not help the appellant in the case before us. The question of fraud was not considered in that case. It should be borne in mind that fraud vitiates and corrupts everything and no person ought to have advantage of his own wrong or gain an advantage by his own fraud.

We are satisfied that the decree-holder (appellant) was guilty of fraud as held by the lower courts. In our opinion no case has been made out to disturb the judgments of the lower courts. We dismiss the appeal with costs.

Appeal dismissed.

(1) (1898) I. L. R., 25 Calc., 99.

(2) (1917) I.L.R., 41 Mad., 474.

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