

the plaintiff-appellant, is void and inoperative, and is, therefore, hereby set aside. We must, however point out that the effect of giving the decree to the plaintiff-appellant in this case will be to restore the parties to the same position in which they stood on the 12th of January, 1924. It will be open to the defendants-respondents to apply to the court, which was seized of that case, to take the case up at that stage in which it stood on the date when the court passed the decree on the 12th of January, 1924.

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As to costs, our order is that the appellant will have his costs in the present suit from the respondents in all the three courts.

*Appeal allowed.*

### REVISIONAL CIVIL.

*Before Mr. Justice Gokaran Nath Misra and Mr. Justice  
E. M. Nanavutty.*

ADITYA PRASAD (AUCTION-PURCHASER-APPLICANT) v. JAG-  
DISH PRASAD AND OTHERS (JUDGMENT-DEBTORS-  
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*Execution of decree—Decree-holder permitted to bid subject to the condition that he was not to bid less than his decretal amount—Property sold in lots—Decree-holder, whether entitled to offer a smaller bid for the first lot reserving his right to offer the balance of the decretal money when the second lot was sold—Party to a decree, whether can be allowed to evade the terms of the decree—Civil Procedure Code, section 115—Revision—High Court, when can interfere in revision.*

Where a decree-holder was granted permission to offer bid for the purchase of the property to be sold in execution of his decree but the court imposed a condition that he could

\*Section 115 Application No. 21 of 1928, against the order of S. Asghar Hasan, Additional District Judge of Gonda, dated the 31st of March, 1928, reversing the order of M. Ziauddin Ahmed, Subordinate Judge of Gonda, dated the 19th of December, 1927.

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not be permitted to bid for any amount below the amount due in the decree in his favour held, that when only one item of the property covered by the decree was sold the decree-holder was clearly within his rights to offer a smaller bid for it reserving his right to offer the balance of the amount due in his favour at the time when the second item of property covered by the decree was sold. The refusal on the part of the sale officer to accept the bid of the decree-holder for the first item amounted to a material irregularity committed in the conduct of the sale.

Where a person is a party to a decree and is bound by its terms, he cannot be allowed to act in a manner so as to nullify or evade the terms of that decree. Therefore a judgment-debtor who makes default in paying the decretal amount within the date fixed in the decree cannot be permitted to purchase the property sold in execution of the decree against him as it would enable him to nullify the effect of the decree by which he was bound.

A High Court in exercising its revisional powers is not justified to exercise them merely on the ground that the order passed by the court below seems to it to be erroneous. Section 115 of the Code of Civil Procedure applies only to a case of jurisdiction alone, the irregular exercise of it or non-exercise of it, or the illegal assumption of it, and the section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

*Raja Amir Hassan Khan v. Sheo Bakhsh Singh* (1), *Muhammad Yusuf Khan v. Abdul Rahman Khan* (2), and *Balakrishna Udayar v. Vasudera Aiyar* (3), referred to.

Mr. Radha Krishna, for the applicant.

Mr. Manohar Lal Khandelwal, for the opposite party.

MISRA and NANAVUTTY, JJ. :—This is an application for revision of the order setting aside a certain auction sale passed by the learned Subordinate Judge of Gondā on the 31st of March, 1928.

(1) L.R., 11 I.A., 237.

(2) L.R., 16 I.A., 101.

(3) L.R., 44 I.A., 261.

The facts which have given rise to this application are as follows.

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On the 8th of October, 1925, three persons Jagdish Prasad, Gaya Prasad and Gur Prasad who are respondents Nos. 1, 2 and 3 before us, obtained a decree for sale from the Court of the Subordinate Judge of Gonda for Rs. 2,194-15-6 against three persons namely Chaudhri Hargobind Singh, Chaudhri Bala Prasad and Babu Aditya Prasad the applicant before us. The decree clearly stated that the sum mentioned above should be paid by the defendants Nos. 1, 2 and 3 up to the 8th of April, 1926, and in case the defendants Nos. 1 and 2 or defendant No. 3 paid the decretal amount in court on or before the date fixed for payment, the plaintiff shall deliver up to the defendants all documents in their possession or power relating to the mortgaged property and shall, if so required, re-transfer the property to the defendants free from mortgage or other incumbrances existing in their favour. The mortgaged property, we may mention, consisted of a two-annas share in village Dewari Khera and a three-annas share in village Bodhipur, both situate in pargana Sadullahnagar, district Gonda.

None of the three defendants against whom the decree was passed made the payment on the date fixed and on the 29th of May, 1926, a decree absolute was passed in favour of the three decree-holders named above against the three judgment-debtors already named. Babu Aditya Prasad, the applicant, was also a party to that decree absolute for sale and the decree clearly stated that as the sum due had not been paid into court on the date fixed, the property against which the decree for sale was passed should be sold and the proceeds realized from the sale spent in the payment of the decree passed in favour of the decree-holders. The amount for which

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the decree was made absolute was Rs. 2,204-8-6 with future interest reckoned from the 29th of May, 1926.

On the 8th of October, 1926, the decree-holders applied for execution of the decree absolute for sale passed in their favour and on the 24th of February, 1927, the court ordered the mortgaged property mentioned above, against which the decree for sale had been passed, to be sold in two lots, one consisting of the share in village Dewari Khera and the other consisting of the share in village Bodhipur. Two separate proclamations were therefore ordered to be issued in respect of those two properties. The date fixed for the sale in both the cases was the 20th of April, 1927. On the 23rd of March, 1927, the decree-holders applied to the court for permission to be allowed to offer bid for the purchase of the property to be sold in execution of their decree. The court granted them permission on the same date but imposed a condition that they would not be permitted to bid for any amount below the amount due under the decree in their favour.

On the 20th of April, 1927, the sale officer sold the two-annas share in village Dewari Khera, it having been purchased by the applicant Aditya Prasad for Rs. 700. On the date of sale the decree-holders put in an application to the effect that the sale had wrongly been knocked down for Rs. 700 in favour of Babu Aditya Prasad although the decree-holders were willing to offer a bid of Rs. 2,355-1-0 and that it was not proper for the court to have ignored their bid. They also stated in the application that the property was very much more in value than the sum of Rs. 700 for which it had been sold to Babu Aditya Prasad. The sale officer rejected the application on the ground that it had been made too late.

On the 21st of April, 1927, the decree-holders filed an application to the court which had passed the decree

under execution, for setting aside the sale on the ground that the court had acted irregularly in not accepting the bid of the decree-holders and had, therefore, committed a material irregularity in the conduct of the sale. It was also alleged by them in the said application that the result of the irregularity was that the property had been sold for much below its value and thus the decree-holders had suffered substantial loss. On these grounds they asked that the sale be set aside.

The learned Subordinate Judge of Gonda who tried this application for setting aside the sale came to the conclusion that there had been no material irregularity in the conduct of the sale and no substantial loss was established to have been suffered by the decree-holders. In this view of the case he dismissed the objection of the decree-holders and refused to set aside the sale.

The decree-holders carried the matter further in appeal and the learned Additional District Judge of Gonda came to the conclusion that material irregularity had been established to have occurred in the conduct of the sale and it was evident from the sale proceedings that the property had been sold for much below its value. On these findings he reversed the order of the Subordinate Judge and set aside the sale.

Babu Aditya Prasad, the auction purchaser, has applied to this Court in revision for setting aside the order passed by the Additional District Judge and it has been again urged by the learned Advocate appearing on his behalf that the learned Additional District Judge was wrong in holding that there was material irregularity in the conduct of the sale and that the property had in consequence been sold for a low sum, thus causing substantial loss to the decree-holders.

We have looked into the record and we find that what happened at the time of the sale on the 20th of April, 1926, was that at first Babu Aditya Prasad offered

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a bid of Rs. 500. Then one Mirza Sulaiman Shah offered the next bid for Rs. 600. Babu Aditya Prasad then again raised the amount of his bid to Rs. 700. One Raj Bahadur, guardian of the minor decree-holders, was present at the time and he offered a bid for Rs. 1,800. The sale officer asked him to bid up to the decretal amount, but he said that he would offer a bid for the balance when the other village would be sold. The sale officer under the circumstances refused to accept the bid of the guardian of the decree-holders and knocked down the property in favour of Babu Aditya Prasad for Rs. 700. These facts are established from the evidence of Raj Bahadur Lal, the guardian himself, who was examined as witness No. 1 and from the evidence of Pandit Ram Kewal, reader of the sale officer, who was examined as witness No. 2. This evidence, therefore, establishes clearly that it is not true that the decree-holder had not made any offer and the *fard boli* must be read in the light of the evidence of Raj Bahadur and of Pandit Ram Kewal, who was responsible for the writing of the said *fard*. We are, therefore, of opinion that the officer conducting the sale was clearly wrong in refusing to accept the bid offered by Raj Bahadur Lal on behalf of the decree-holders. The permission granted by the court to the decree-holders on the 23rd of March, 1927, did not specify what amount the decree-holders were to bid when one item of the property covered by the sale-decree was to be sold. The decree-holders' guardian was, therefore, clearly within his rights to offer a bid for Rs. 1,800 when the village Dewari Khara alone was being sold, reserving his right to offer the balance of the amount due in his favour at the time when the second item of property covered by the decree, namely the share in village Bodhipur, was sold. We are in entire agreement with the view taken by the learned Additional District Judge. The refusal on the part of the sale officer to

accept the bid of the decree-holders, in our opinion, amounts to a material irregularity committed in the conduct of the sale.

As to the substantial injury suffered by the decree holder by reason of this irregularity the position in our opinion is so obvious that it requires no argument. The decree-holders could have realized the entire amount of their decree or at least such portion of it as they might have chosen to have offered the bid for, and by not being allowed to offer bids at the time of the sale which was the action of the sale officer there has resulted a loss to them in the property being sold for a sum of Rs. 700 only. It is clear that they had offered at least Rs. 1,800 and if the sale officer had accepted their bid for that sum, the decree would have become satisfied at least to that extent. The substantial injury suffered by the decree-holders by reason of the irregularity committed in the conduct of the sale is, therefore, in our opinion, amply established by the facts proved.

We are, therefore, of opinion that the learned Additional District Judge was quite correct in holding that there was a material irregularity committed in the conduct of the sale and that substantial injury had been sustained by the decree-holders by reason of such irregularity and, therefore, no cause for interference in revision has been made out on the merits. But we should like to point out that their Lordships of the Privy Council have frequently observed that a High Court in exercising its revisional powers is not justified to exercise them merely on the ground that the order passed by the court below seems to it to be erroneous. If the court, whose order it is intended to revise, had jurisdiction to decide the matter and has acted properly in the exercise of that jurisdiction, its order should not be set aside merely on the ground that the High Court cannot agree

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with the conclusion arrived at by the trial court whether the case is decided rightly or wrongly. If the court deciding it had jurisdiction to decide the matter, it cannot be considered to have exercised its jurisdiction illegally or with material irregularity simply because the case appears to the High Court to have been decided wrongly—vide *Rajah Amir Hassan Khan v. Sheo Bakhsh Singh* (1) and *Muhammad Yusuf Khan v. Abdul Rahman Khan* (2). In a recent case decided by their Lordships of the Privy Council and reported in *Balakrishna Udayar v. Vasudeva Aiyar* (3), their Lordships observed at page 267 that section 115 of the Code of Civil Procedure applies only to a case of jurisdiction alone, the irregular exercise of it or non-exercise of it, or the illegal assumption of it, and that the section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved. It, therefore, appears to us to be clear on the authorities quoted above that even if the conclusions arrived at by the learned Additional District Judge had been erroneous we would not have been justified in interfering with them in our revisional jurisdiction.

We might also mention that we are in entire agreement with the principle of law mentioned by the learned Additional District Judge in his judgment that where a person is a party to a decree and is bound by its terms he cannot be allowed to act in a manner so as to nullify or evade the terms of that decree. The learned Additional District Judge observes that the applicant Aditya Prasad was a judgment-debtor in the decree obtained by the respondents against him and others on the 8th of October, 1925. That decree clearly specified that Babu Aditya Prasad who was impleaded as defendant No. 3 should make the payment as ordered by the decree within

(1) (1884) L.R., 11 I.A., 237 : s.c. (2) (1889) L.R., 16 I.A., 104 : s.c.  
I.L.R., 11 Cal., 6. I.L.R., 16 Cal., 749.

(3) (1917) L.R., 44 I.A., 261.



the time fixed by it and if the money was not so paid the property mortgaged or sufficient part of it was to be sold. This would not enable Babu Aditya Prasad who was bound by the decree to purchase the same property after having made a default in making the payment he was directed to make. It appears to us to be clear that no judgment-debtor can be permitted to do this. Allowing such a thing to be done by the judgment-debtors would clearly enable them to nullify the effects of the decree by which they are and must be held to be bound.

We, therefore, dismiss this application with costs.

*Application dismissed.*

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## APPELLATE CIVIL.

*Before Sir Louis Stuart, Knight, Chief Judge and Mr. Justice  
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IMDAD ALI (PLAINTIFF-APPELLANT) v. ASHIQ ALI AND  
OTHERS (DEFENDANTS-RESPONDENTS.)\*

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September,  
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*Musalman Waqf Validating Act (VI of 1913), section 3—  
Waqf by a Sunni Muhammadan providing maintenance  
for his half-brother, half-sister and uncle's sons and  
grandsons—Brother, whether member of a Muslim's  
family—"Family" in section 3 of Act VI of 1913, mean-  
ing of.*

A brother is a member of a Muslim's family within the meaning of section 3 of Act VI of 1913 even when such brother lives in a different country and supports himself. In considering the correct meaning of the word "family" in the section there is no reason whatever for introducing the restriction that it includes only those persons residing in the house for whose maintenance the author of the trust is mainly responsible.

\*First Civil Appeal No. 158 of 1927, against the decree of Pandit Shyam Manohar Nath Shargha, Additional Subordinate Judge of Sitapur, dated the 15th of September, 1927, dismissing the plaintiff's suit.