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 (BHAGAN)
 v.
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 EMPEROR

*Srivastava
 and
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established, it would have been necessary for us to issue notice against him for enhancement of the sentence, but having examined the record and the evidence we are satisfied that the case against Saktu is even weaker than the case against the three appellants. Saktu in his confession did not admit that he had taken any part in the murder. None of his co-accused also assigned him any part in the commission of the crime. All that was said was that he had been standing at some distance and that after the murder had been committed, he removed the ornaments which were subsequently recovered from him.

For the reasons given above we are of opinion that the charge against Saktu also has not been made out. We accordingly, in exercise of our powers of revision under section 439 of the Code of Criminal Procedure, set aside his conviction and sentence and direct that he be set at liberty at once.

Appeal allowed.

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
 Mr. Justice Rachhpal Singh*

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 February, 5 LALA BASANT LAL AND ANOTHER (APPLICANTS) v. MOHAM-
 MAD NAWAB ALI KHAN (JUDGMENT-DEBTOR-OPPOSITE
 PARTY)*

Civil Procedure Code (Act V of 1908), section 68 and order XXI, rule 90—United Provinces Government notification No. 576/IA—93 requiring transfer of execution of decree cases involving sale of agricultural land from civil courts to Collector—Sale held by civil court before the 1st of April, 1932, but not confirmed—Notification, whether applies to the sale—Section 68, Civil Procedure Code, scope of—Local Government's power to transfer execution cases to Collector under section 68.

*Section 115 Application No. 47 of 1933, against the order of Dr. Chaudhri Abdul Azim Siddiqi, Additional Subordinate Judge of Lucknow, dated the 18th of February, 1933, confirming the order of Saiyid Akhtar Ahsan, Munsif of Lucknow District, dated the 20th of July, 1932.

Where in exercise of the powers conferred by section 68 of the Code of Civil Procedure, 1908, the Local Government by notification declared that, with effect from the 1st of April, 1932, the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector, the notification would not be applicable to those cases in which civil courts, in pursuance of sale orders, had already sold the properties before the date on which the notification came into force though the sales had not been confirmed. Therefore, where agricultural land had been sold by civil court on the 21st of March, 1932, but the sale was not confirmed before the notification mentioned above came into force, the sale cannot be set aside under order XXI, rule 90 of the Code of Civil Procedure, on the ground that the execution case should have been transferred to the Collector under the notification. *Naqi Ahmad v. Sheo Shankar Lal* (1), and *Amir Haider v. Babu Lal* (2), distinguished. *Hafiz-un-nissa v. Mahadeo Prasad* (3), referred to.

Under the provisions of section 68 of the Code of Civil Procedure the Local Government has no power to transfer to the Collector an execution case pending in a civil court in which that court has already sold the property but the sale has not been confirmed; the power of the Local Government is confined only to those cases in which the property has not been sold but only an order for sale has been passed.

Mr. *M. Wasim*, for the applicants.

Mr. *Hakim Uddin Siddiqi*, for the opposite party.

SRIVASTAVA and RACHHPAL SINGH, JJ.:—These are two connected revision applications arising out of execution proceedings.

Ram Saroop holds a decree against Mohammad Nawab Ali Khan and others. In execution of this decree a three annas share in village Piarepur, belonging to the judgment-debtors, was attached and sold on the 21st of March, 1932. On the 20th of June, 1932, Mohammad Nawab Ali Khan, one of the judgment-debtors, made an application under rule 90, order XXI, Code of Civil Procedure, praying that the sale should be set aside. The court executing the decree allowed

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(1) (1933) I.L.R., 8 Luck., 504. (2) (1933) I.L.R., 9 Luck., 390.
(3) (1881) I.L.R., 4 All., 116.

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the objections of the judgment-debtor and passed an order setting aside the sale. The decree-holder and the auction-purchaser appealed against that order. The learned Subordinate Judge who heard the appeal confirmed the order of the court executing the decree, on the ground that in view of the Government notification No. 576/IA—93, published in the *Government Gazette* of the 26th of March, 1932, Part I, the sale of the property by a civil court was *ultra vires* and ineffective. He did not, in this view, consider it necessary to give any finding on the other points involved in the case and dismissed the appeals. The two applications in revision have been preferred by the decree-holder and the auction-purchaser.

The only question for our consideration is whether the view which has been taken by the learned Subordinate Judge, that the sale was *ultra vires* because of the above-mentioned notification, is correct.

The above-mentioned notification runs as follows:

“In supersession of notification No. 1887/I—238, dated the 7th of October, 1911, and in exercise of the powers conferred by section 68 of the Code of Civil Procedure, 1908, the Governor in Council is pleased to declare that, with effect from the 1st of April, 1932, the execution of decrees in cases in which a civil court has ordered any agricultural land situated in the United Provinces of Agra and Oudh or any interest in such land to be sold, shall be transferred to the Collector.”

In the opinion of the learned Subordinate Judge this notification referred to all execution cases relating to agricultural land pending on the 1st of April, 1932, and he holds that it ousted the jurisdiction of the civil court to proceed with any such application after the 1st of April, 1932. He did not accept the contention raised on behalf of the applicant that the notification would not be applicable to those cases in which a sale

had already taken place. In our opinion the view taken by the learned Subordinate Judge does not appear to be correct. According to our interpretation the notification referred to above is not applicable to those cases in which the sale has already taken place in pursuance of an order passed by the court in execution before the date on which the notification came into force. On behalf of the judgment-debtor reliance has been placed on two rulings of this Court reported in the Indian Law Reports, Lucknow Series. The first is *Naqi Ahmad v. Sheo Shankar Lal* (1). That case is not directly in point. There an order for sale had been passed by the court executing the decree before the date on which the Government notification came into force, but no sale had taken place, and the learned Judge who decided the case held that an order directing that a sale should take place would not give power to a civil court to sell the property after the date on which the above notification came into force. The other case relied upon is *Amir Haider v. Babu Lal* (2). That was a case in which the sale in question had been made by the civil court after the date of the aforesaid notification, and a Bench of two learned Judges of this Court held that it was void. We think that this ruling is also not applicable to the case before us. The learned Judges in their judgment at one place say: "We must hold that if sale in execution of a decree has not been made previous to the 1st of April, 1932, the execution proceedings must be held to be pending." This clearly shows that what was laid down in that ruling was that a sale by a civil court of agricultural property, after the date of the above-mentioned notification, would be a nullity. None of these two cases are any authority for the proposition that the same would be the result if a sale has already taken place before the date on which the notification came into effect. We may here refer to a Full Bench ruling of the Allahabad

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High Court reported in *Hafiz-un-nissa v. Mahadeo Prasad* (1) where it was laid down in a similar case "that effect cannot be given to the rules prescribed by the Local Government under section 320 of Act X of 1877, unless an order for sale has been made on or after the 1st of October, 1880." Tyrrell, J., in that case made the following observations in his judgment which are to be found at page 120:—

"The notification would, therefore, be properly applied to all cases of execution of decrees by such courts wherein the order for sale comes into existence on or after the 1st of October, 1880. But when orders for sale had been passed prior to that date, it seems to me that rules and procedure which are to be applied *pari passu* with and in immediate sequence to such orders for sale, but which had not come into existence, or rather were not operative, till a date subsequent to the date of the order for sale, could not rightly be applied retrospectively to such orders."

This view appears to be somewhat in conflict with the view taken in the above-mentioned two rulings of this Court, but so far as the case before us is concerned, it is not necessary to go into this question at all. The case before us is not one in which an order for sale only had been passed before the date of the aforesaid notification, but is one in which a sale had already taken place. We are unable to accept the contention that the aforesaid notification would be applicable to those cases in which civil courts, in pursuance of sale orders, had already sold the properties but in which the sales had not been confirmed. It has already been mentioned that in the case before us the sale of the property in dispute had taken place on the 21st of March, 1932, that is to say, before the notification mentioned above came into force. The civil court was the proper court, before the date on which the

(1) (1881) I.L.R., 4 All., 116.

above-mentioned notification was given effect to, which could order the sale of the property in question and to sell the same. Under the provisions of the Code of Civil Procedure the civil court was fully competent to sell the property of the judgment-debtor. We find ourselves unable to accept the contention raised on behalf of the judgment-debtor that the notification contemplated that in cases in which civil courts had already sold properties there should be fresh sales. Section 68 of the Code of Civil Procedure empowers the Local Government to declare, by notification in the local official *Gazette*, that in any local area the execution of decrees in cases in which a court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector. We do not think that under the provisions of this section of the Code of Civil Procedure the Local Government has any power to transfer to the Collector an execution case pending in a civil court in which that court has already sold the property but the sale has not been confirmed. The power of the Local Government, in our opinion, is confined only to those cases in which the property has not been sold but only an order for sale has been passed. It appears to us that if the intention of the Local Government had been that the notification should apply not only to those cases in which the sale had not taken place but also to those in which the sale had already taken place but had not been confirmed, then this would have been made clear in the notification issued by it, and it would have said that in such cases the properties should be resold by the Collector. In any case we are not prepared to hold that the notification referred to above can affect those cases in which the civil court had not only ordered the property to be sold but had actually sold it. If the contention of the learned

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counsel appearing for the judgment-debtor were accepted some curious results would follow. The sale has been made by the civil court which was fully competent to make it. Now if the decree is transferred to the Collector for execution then he will have to consider the question as to whether or not the sale should be confirmed. Under the law the Collector has no power to confirm or set aside a sale which has been lawfully made by a civil court of competent jurisdiction. Under the rules made by the Local Government which are published in the Manual of the Revenue Department, United Provinces, Volume I, and which are to be found at pages 311 and 312, the procedure for setting aside the sales made by the Collector is laid down. Paragraph 996 prescribes the procedure to be adopted when an application for setting aside such a sale has been made. Paragraph 998 empowers the Collector to confirm the sale; but it will be seen that the powers of the Collector are confined to sales which have been made by his own court and not by the civil court. If the judgment-debtor in the case before us were to go to the court of the Collector with an application for setting aside the sale, it would be thrown out, on the ground that the Collector possesses no power to set aside a sale which has been made by a civil court. He has no jurisdiction under the law to do so, yet the learned counsel for the judgment-debtor suggests to us that the civil court should transfer the decree to the Collector and then there the question as to whether or not the sale is good should be decided. In our opinion the Collector possesses no powers to determine this question. We are of opinion that the sale by the civil court was quite valid. The court was fully competent to sell the property at the time it was sold. We do not think that the notification referred to above can be applied to a case in which a civil court has sold the property but the sale has not been confirmed. Therefore, the order of the court below setting aside the sale

was not justifiable under the circumstances, and must, therefore, be reversed. The cases must go back to the lower appellate court for decision on the points which it has not decided.

We accordingly allow these two applications for revision, set aside the order passed by the court below, and send back both the cases to it with directions that it should hear the parties as regards the other questions involved in the case and then decide the applications according to law. The applicants will get their costs in this Court from the judgment-debtor. Costs in the court below will abide the result of the case.

Applications allowed.

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REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

MRS. M. J. WALTER (ACCUSED-APPLICANT) v. KING-
EMPEROR (COMPLAINANT-OPPOSITE PARTY)*

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Special Marriage Act (III of 1872), sections 1 and 21—Indian Penal Code (Act XLV of 1860), section 199—Section 21, Special Marriage Act, requirements of—Party to marriage declaring that she did not profess Christian religion—No evidence that when she made the declaration she knew or had reason to believe that it was false—Prosecution under section 21, whether good—Burden of proving that declaration was false.

The offence contemplated in section 21 of the Special Marriage Act (III of 1872), only deals with the declaration of a profession of want of belief in the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh, or Jain religion at the time when the declaration is made. A person may be born to parents professing one of these religions and may even have been practising the tenets of one of them up to the time of his marriage, but if at the time when he contracts a marriage under the Special Marriage Act (III of 1872) he makes a declaration that he does not profess any of these religions, then it cannot be said against him that, because he was born into the Christian, Jewish, Hindu,

*Criminal Revision No. 142 of 1933, against the order of Ch. Akbar Husain, I.C.S., Sessions Judge of Lucknow, dated the 28th of October, 1933.