

husband's inheritance by "Rud". Therefore, when no Imam is in existence in actual flesh she is undoubtedly entitled to get the benefit of the doctrine of "return".

As according to the view taken by us Ahmadi Bibi was entitled to the whole of her husband's inheritance and as the plaintiff-appellant is her sole heir his suit must succeed.

The appeal is, therefore, allowed with costs and the plaintiff-appellant's suit decreed as prayed.

Appeal allowed.

APPELLATE CIVIL

*Before Mr. Justice E. M. Nanavutty and Mr. Justice
G. H. Thomas*

HARI SHANKAR (JUDGMENT-DEBTOR-APPELLANT) *v.* MUSAM-
MAT AMINA BIBI (DECREE-HOLDER-RESPONDENT)*

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November 19

Civil Procedure Code (Act V of 1908), Order XXI, rules 84 and 89—Limitation Act (IX of 1908), Schedule I, Article 166—Oudh Civil Rules, Rule 211—Execution of decree of Civil court—Self-acquired revenue-paying land of judgment-debtor ordered to be sold—Sale by Collector—Sale, when complete—Approval of executing court—Application to set aside sale—Limitation, starting point of—Date on which sale is approved.

Where in execution of a civil court decree self-acquired property of the judgment-debtor is ordered to be sold and the papers are sent to the Collector under rule 211, Oudh Civil Rules, for sale, the Collector conducting the sale is only a ministerial officer appointed to sell the property and the Civil Court remains seized with the execution. The sale, although held by an officer of the Court, or by a person appointed in this behalf, is nevertheless a sale by the Court itself. It is not completed until the Court formally accepts the bid and declares the purchaser under Order XXI, rule 84, Civil Procedure Code. Prior to such order, the bidder, whose bid has been accepted by the sale officer at the time of the bid, does not acquire any interest in the property. He becomes the purchaser only when

*Execution of Decree Appeal No. 23 of 1933, against the order of Pandit Brij Kishen Topa, Subordinate Judge of Malihabad at Lucknow, dated the 11th of January, 1933, reversing the order of S. Akhtar Ahsan, Munsif, Lucknow, dated the 16th of March, 1932.

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the sale is approved by the executing court, and, therefore, the starting period of limitation under Schedule I, Article 166, Limitation Act, for an application to set aside the sale under Order XXI, rule 89, Civil Procedure Code, is the date when the sale is so approved by the executing civil court, and not the date when the Collector or sale officer accepts the bid and reports the sale to the Civil Court. *Kanwal Ram v. Gurdei* (1), and *Mahabir Singh v. Lal Ambika Bakhsh Singh* (2), relied on.

Mr. *Radha Krishna*, for the appellant.

Messrs. *Hakim-ud-din Siddiqui* and *Nazir-ud-din*, for the respondent.

NANAVUTTY and THOMAS, JJ.:—This is a judgment-debtor's appeal filed under order XXI, rule 89 of the Code of Civil Procedure against the judgment and decree of the learned Subordinate Judge of Malihabad, Lucknow, dated the 11th of January, 1933, setting aside the decree of the learned Munsif of Lucknow, dated the 16th of March, 1932.

A preliminary objection has been taken by the learned Counsel for the respondent that no second execution appeal lies. The learned Counsel for the appellant agrees that no second appeal lies, but has made a prayer that we should treat his appeal as an application for revision under section 115 of the Code of Civil Procedure. We have granted his request and have heard this appeal as a revision.

Musammat Amina Bibi had a decree against Musammat Sheorani and in execution of the same a 2 pies 18 krants share in village Naronia, belonging to the judgment-debtor, was attached and ordered to be sold. As the property to be sold in execution of the decree was self-acquired revenue-paying land, the papers, under rule 211 of the Oudh Civil Rules, were sent to the Collector of Lucknow for sale.

It may be noted that Musammat Sheorani died during the pendency of the appeal in this Court, and Hari Shankar, by an order of this Court, dated the 7th of

(1) (1931) 8 O.W.N., 633.

(2) (1933) I.L.R., 9 Luck., 77.

May, 1934, was brought on the record as her legal representative.

On the 21st of December, 1931, the sale officer reported to the learned Munsif of Lucknow that the property had been sold to the decree-holder for Rs.1,253-15 and on the 22nd of December, 1931, the decree-holder deposited the sale commission fee of Rs.13 and a receipt for Rs.1,240-15.

On the 8th of January, 1932, the sale was "approved" by the learned Munsif.

On the 10th of February, 1932, the judgment-debtor applied to deposit the sale amount under order XXI, rule 89 of the Code of Civil Procedure. The decree-holder-purchaser opposed the application on the ground that the amount was not deposited within thirty days from the 21st of December, 1931. The reply of the judgment-debtor was that the sale was completed on the 8th of January, 1932, when the Munsif "approved" of the sale.

It may be noted that from the 5th to 9th February, the courts were closed and the money was deposited on the 10th of February, 1932.

The learned Munsif held that the application of the judgment-debtor was within thirty days from the 8th of January, 1932. He accordingly set aside the sale in favour of the judgment-debtor.

The decree-holder appealed against the decree of the learned Munsif and the learned Subordinate Judge held that the application of the judgment-debtor under order XXI, rule 89 of the Code of Civil Procedure was barred by time.

The judgment-debtor has now come up to this Court, and the sole question for decision is whether his application, dated the 10th of February, 1932, is within thirty days from the date of sale.

It is contended by the learned Counsel on behalf of the judgment-debtor-appellant that the sale was completed on the 8th of January, 1932, when the bid was

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“approved” by the learned Munsif, and 5th to 9th February, being holidays, the application and deposit of money on the 10th of February, 1932, were within time.

It is admitted by the decree-holder-opposite party that if the 8th of January is regarded as the date of sale, then the application under order XXI, rule 89 of the Code of Civil Procedure is within time.

The learned Counsel for the applicant has relied on a decision by a Bench of this Court reported in *Kanwal Ram v. Musammat Gurdei and others* (1) where it was held that the rule of limitation governing applications under order XXI, rule 89 of the Code of Civil Procedure is to be found in Article 166 of the first Schedule of the Indian Limitation Act and the *terminus a quo* for such applications is the date of the sale.

In our opinion, this decision supports the contention of the learned Counsel for the applicant. We are of opinion that the Collector was acting merely as a sale officer under the directions of the executing court under rule 211 of the Oudh Civil Rules, and the learned Munsif remained seized with the execution. It was not a case of sale of ancestral property involving the transfer of the execution of the decree to the Collector in accordance with the provisions of section 68 of the Code of Civil Procedure.

We are supported in the above view by a decision reported in *Mahabir Singh v. Lal Ambika Bakhsh Singh* (2) and also certain observations made in an unreported case (Execution of Decree Appeals Nos. 72, 73 and 74 of 1930: *Musammat Kaniza and others v. Abu Mohamad Khan and others*) decided on the 7th of April, 1931.

Under rule 211 clause 3 of the Oudh Civil Rules, objections and claims have to be preferred to the court enforcing the decree, and have to be disposed of by the court. The civil court, in our opinion, has therefore jurisdiction to go behind the order of the sale officer, and, in our opinion, the Collector is only a ministerial

(1) (1931) 8 O.W.N., 633.

(2) (1933) I.L.R., 9 Luck., 77.

officer appointed to sell the property. The sale of property in an auction by the order of a court, although held by an officer of the court or by any person appointed in this behalf, is nevertheless a sale by the court itself. It is not completed until the court formally accepts the bid and declares the purchaser under order XXI, rule 84 of the Code of Civil Procedure. Prior to such order, the bidder, whose bid has been accepted by the sale officer at the time of the bid, does not acquire any interest in the property.

Order XXI, rule 84 of the Code of Civil Procedure provides that "on every sale of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. . . ."

In our opinion the decree-holder was declared a purchaser only on the 8th of January, 1932, when the learned Munsif "approved" of the sale.

In our opinion the starting period of limitation under Article 166 of the Indian Limitation Act is the 8th of January, 1932, and the application of the applicant is within time.

It has been urged by the learned Counsel for the opposite party that no revision lies and he has, in support of his contention, cited certain rulings; but in our opinion the learned Subordinate Judge has acted in the exercise of his jurisdiction illegally in setting aside the decree of the learned Munsif. We may point out that the case reported in 8 O. W. N., 633 above referred to, in which a Bench of this Court interfered, was also an application in revision.

We accordingly allow the application, set aside the order of the learned Subordinate Judge and restore that of the learned Munsif, with costs.

Appeal allowed.

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