

P. C\*  
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June 23.

BIRJ MOHUN THAKUR AND ANOTHER (PETITIONERS) v. RAI UMA  
NATH CHOWDHRY AND OTHERS (OBJECTORS).

[On appeal from the High Court at Calcutta.]

*Sale in execution of decree—Civil Procedure Code (Act XIV of 1882), ss. 311, 312, 313, and 622—Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser—Superintendence of High Court.*

A purchaser at a Court sale, alleging that he had been misled by a misrepresentation as to the extent of the estate which he had believed to be put up for sale, obtained, on his petition before confirmation, a summary order setting aside the sale.

*Held*, that the High Court had rightly cancelled this order, exercising its authority under section 622 of the Code of Civil Procedure; that the purchaser, though he would have his remedy, on his taking the appropriate one, if he had been induced by fraud to pay a larger price than he otherwise would have offered, had no right to apply under either section 311 or 313 of the Code of Civil Procedure (as they provided only for the particular cases to which they referred); and that section 312 in the absence of cases falling within those sections required that the sale should be confirmed.

APPEAL from a decree (30th January 1888) of the High Court, reversing an order (21st January 1887) of the Subordinate Judge of Bhagulpore.

At a Court sale (6th July 1886) under section 284 of the Code of Civil Procedure, in execution of a decree (16th September 1885) obtained by Sibchunder Panday and others against Umanath Chowdhry and others on a mortgage for Rs. 20,118, an 8 annas share of a mauza named Colgong in the Bhagulpore district was put up for sale and bought by Hurris Mohun Thakur and the other appellants for Rs. 33,000. Before the sale was confirmed the purchasers applied to the Court by petition that the sale to them might be set aside on the ground that they had been under a misapprehension as to what was to be sold, supposing that the whole of the judgment-debtor's mahal was to be sold, and not only half of it; and alleging that in consequence of this mistake they had paid much more than the true value of the property. They gave evidence to show that a misstatement had been made to them

\* *Present*: LORDS HOBHOUSE, MORRIS, and HANNEN, SIR R. COUGH and LORD SHAND.

on this point by, or on behalf of, the judgment-debtors. This application was opposed by the judgment-debtors and by the decree-holders. The Subordinate Judge made the order asked for. He was of opinion that the allegations of fact made by the applicants were established; and that "every Court had an inherent power to see that no party in proceedings before it, and which he was called on to confirm, was induced by fraud or misrepresentation of the other party to do an act which otherwise he would not have done."

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Against the order so made the judgment-debtors appealed, making the auction-purchasers, who had obtained it, respondents; the latter appeared, but the decree-holders, who were also made respondents, did not appear.

A Division Bench (WILSON and MACPHERSON, JJ.) gave judgment as follows, cancelling the order:—

"We think that section 313 has no application to this case. The operation of that section is in express terms limited to cases in which the judgment-debtor has no saleable interest in the property sold. In the present case the complaint is not that the judgment-debtor had not a good title to the property sold, but that the purchaser was led into a mistake as to what he was buying. Section 311 has no application, for it empowers no one but the decree-holder, or one whose property has been sold, to seek the intervention of the Court. As to the inherent power of courts to prevent one party to the proceedings before it from taking unfair advantage of another by fraud or misrepresentation, it is unnecessary to say anything beyond this, that a Court can in general make orders in a suit only as between parties to the suit. A purchaser at an execution sale is not a party to the suit, and the only case in which the Court is empowered summarily to set aside a sale at his instance is that provided for by section 313. We express no opinion as to whether the view taken of the facts by the Subordinate Judge is correct, or whether, if so, the purchaser has any remedy. We only hold that the summary order made in this case could not properly be made.

"A point was made as to our power to interfere on appeal. The Subordinate Judge gives several grounds to justify his order. If it be regarded as an order under section 311 or section 313, an

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appeal lies. If it be regarded as an order made under the inherent power of the Court apart from specific statutory enactment, we have power to set it aside under section 622. And under the circumstances, we think we ought to exercise that power.

“In the interest of all those who are concerned, we set aside the order complained of, not only as between the parties to this appeal, but as between all the parties to the order.”

On this appeal,

Mr. C. W. Arathoon, for the appellants, argued that the order of the Subordinate Judge was final, as there was no right of appeal from his decision made, in reference to section 312, and refusing to confirm a sale. He acted rightly in conducting an inquiry into the facts as to the alleged misrepresentation before confirming the sale, and his judgment declining so to do was sound.

Regarding applications to set aside sales, *Mian Jan v. Man Singh* (1), *Hira Lal v. Karimunnisa* (2), and *Doorga Sunderi Devi v. Govinda Chandra Addy* (3); and as to the High Court's power under section 622, Civil Procedure, *Muhammad Yusuf Khan v. Abdul Rahman Khan* (4), and *Amir Hassam Khan v. Sheo Baksh Singh* (5) were referred to.

The respondents did not appear.

Their Lordships' judgment was delivered by—

LORD HANNEN.—It is now conceded that sections 311 to 313 of the Civil Procedure Code do not apply in this case. Section 311 is limited strictly to “the decree-holder or any person whose immoveable property has been sold,” which the present appellant is not. Section 313 applies to the purchaser, and its scope is limited to the case of a person whose property is purported to be sold, and who had no saleable interest therein, which is not this case.

Here there was an order for sale, and the property was put up for sale, but there was no order confirming the sale. Under

(1) I. L. R., 2 All., 686.

(2) I. L. R., 2 All., 780.

(3) I. L. R., 10 Calc., 368.

(4) I. L. R., 16 Calc., 749; L. R., 16 I. A., 104.

(5) I. L. R., 11 Calc., 6; L. R., I. A., 237.

section 312, if no such application as is mentioned in section 311 is made, there is only one duty left to the Court, namely, to pass an order confirming the sale as regards the parties to the suit and the purchaser. The Subordinate Judge refused to do that, and set aside the sale, and directed the purchase money to be refunded on certain terms. In so doing he declined to exercise a jurisdiction which he had, and exercised one which did not belong to him, and consequently his judgment was liable to be reviewed by the High Court under the 622nd section of the Code of Civil Procedure.

It does not, however, follow that the appellant is without remedy, but he must select the appropriate remedy. Not having a remedy under the Code, which provides only for the particular cases named therein, he still has the right to have the sale set aside, if it be true that he has been induced by fraud to pay a larger sum for the property purchased than he would have had to pay if he had not been so deceived.

For these reasons their Lordships will humbly advise Her Majesty that this appeal should be dismissed.

*Appeal dismissed.*

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Pigot and Mr. Justice Beverley.*

KEDAR \*PROSUNNO LAHIRI (DEFENDANT) *v.* PROTAP CHUN-  
DER TALUKDAR, MINOR, BY HIS MOTHER AND NEXT FRIEND  
RAJMONI DABI AND ANOTHER (PLAINTIFFS).\*

1891  
*April 23.*

*Minor—Suit in substance against minor—Sale certificate, irregular description in—Decree against widow representing her minor son—Decree, sale of infant's share under—Representation of minor in suit.*

A sale certificate expressed a rent decree to have been made against R, the widow and heiress of K, and the mother of a minor son, name unknown.

\* Appeal from appellate decree No. 1280 of 1890, against the decree of J. F. Bradbury, Esq., Judge of Pubna and Bogra, dated the 14th July 1890, reversing the decree of Babu Ashootosh Sarkar, 2nd Munsif of Pubna, dated the 1st July 1889.

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