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this be the case, as to which their Lordships do not find it necessary to pronounce, it would be carrying technicality to an excess to consider this property as immovable property. In the hands of the deceased and in the hands of the widow till the sale it was money secured by a mortgage on immovable property. For a very brief period it might be said that the widow had converted the property by her purchase at the sale; but even this can hardly be said. The sale had not been confirmed and the compromise was upon the very point whether it should be confirmed, that is whether the property should be converted. In these circumstances there is no substance in the suggestion that the compromise is more difficult to uphold because it resulted in an alienation of immovable rather than of movable property.

Their Lordships will therefore humbly advise His Majesty that this appeal be dismissed with one set of costs.

Solicitors for appellants: *Watkins & Hunter.*

Solicitors for first respondent: *Truefitt & Francis.*

Solicitors for fourth respondent: *Pugh & Co.*

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Coutts and Das, J.J.*

KUMAR RAMYAD SINGH

v.

CHHEDIA BARHI.\*

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June, 13.

*Execution of Decree—Sale, whether part of property may be exempted from—effect of such exemption—Suit by decree—*

\* Appeals from Appellate Decrees Nos. 702, 746 and 747 of 1920, from a decision of Babu Pramatha Nath Bhattacharji, Additional Subordinate Judge of Hazaribagh, dated the 26th April, 1920, confirming a decision of Maulavi Shaikh Ali Karim, Munsif of Hazaribagh, dated the 30th April, 1919.

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holder to set aside sale, maintainability of—Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908), section 213.

Where a holding is put up for sale in execution of a decree for rent the Court has not power to exempt a part of the holding from the sale.

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Therefore, where the Court granted permission to the decree-holder to bid at the execution sale, but also ordered that a part of the holding was to be exempt from the sale, held, (i) that the order of exemption and the sale were without jurisdiction and (ii) that the plaintiff was entitled to maintain a suit to set aside the sale, and that his remedy was not confined to an application under section 213 of the Chota Nagpur Tenancy Act, 1908.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Coutts, J.

*Sivanandan Rai*, for the appellant.

COUTTS, J.—These appeals arise out of suits brought to set aside sales in execution of decrees on the ground of want of jurisdiction. The case is a somewhat curious one.

Kumar Ramyad Singh, the plaintiff, brought suits against three persons Jhamna Dusadh, Chhedia Barhi and Lochan Koeri for arrears of rent. The suits were under the provisions of the Civil Procedure Code decreed and on applying for execution the defendants' holdings were put up for sale in the ordinary course. On the date fixed for the sales the plaintiff applied for permission to bid and permission was granted by the Deputy Collector with the reservation that the plaintiff should not be allowed to bid for the defendants' *ghars* and *gharbaris*. The plaintiff alleges that he had no knowledge of this reservation; he bid for and purchased the holdings, the sales were confirmed and it was not until after the confirmation of the sales that the plaintiff discovered that the *ghars* and *gharbaris* had been exempted. His contention is that in exempting these portions of the holdings the Deputy Collector acted

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without jurisdiction and he has consequently brought these suits to set aside the sales.

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The suits were dismissed in the Court of first instance and the decisions having been upheld on appeal the plaintiff has again appealed to this Court. The defendants at the time of the trial alleged that the *ghars* and *gharbaris* were no portions of the holdings; this, however, was found against them by the Court of first instance, and apparently on appeal the question was not raised so that we must now take that the *ghars* and *gharbaris* are parts of the holdings. The only questions, therefore, which remain are whether the Deputy Collector had jurisdiction to exempt these portions of the holdings and whether for this reason the sales were without jurisdiction. The whole holdings were put up for sale and I can find nothing in the Chota Nagpur Tenancy Act which would authorise the Deputy Collector to exempt any portion of a holding or to forbid an intending purchaser to bid for a portion of it. In these circumstances it seems to me that the order of the Deputy Collector exempting these portions of the holdings from sale was without jurisdiction and if this is so clearly the sales themselves which purport to exclude these portions of the holdings which were put up for sale are also clearly without jurisdiction. Both the Courts below have referred to the fact that the plaintiffs might have made an application under section 213 to set aside the sales and they seem to think that because the plaintiff did not do this he is not entitled to succeed in these suits. I am unable to understand this view. It is true that the plaintiff could have made an application under section 213 but the fact that he did not do so certainly cannot bar the suits. In my view the sales were without jurisdiction and should be set aside. I would accordingly decree these appeals.

Das, J.—I agree.

*Appeals dismissed.*