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BUCKNILL, J.

I am not prepared to subscribe altogether to the view that this Court must slavishly follow the decisions of the Calcutta High Court or of any other High Court: but after having listened to the arguments in this case very carefully and having read all the cases quoted in these proceedings, I have come to the conclusion that the Calcutta rulings are correct. I therefore agree with my learned colleague that this appeal should be dismissed.

Appeal dismissed.

REVISIONAL CIVIL.

Before Dawson Miller, C. J. and Mullick, J.

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MAHARAJ BAHADUR SINGH

v.

May, 11.

A. H. FORBES, *.

Superintendence—High Court's powers of—injunction issued by lower court not binding on District Judge—duty of District Judge to prevent contempt of lower court's order—power of High Court to exercise superintendence over District Judge—Inherent powers.

Where the High Court issued an order that a sale which had been ordered by the District Judge should not be held if the decretal amount was deposited in court on a certain date, and that in the event of the money not being deposited the sale should be held on a particular day, *held*, that the order of the High Court was in no sense in the nature of a mandatory order directing the property to be sold in any event, but merely an order staying the sale until the petitioner had an opportunity of paying the money into court.

Therefore, where the judgment-debtor had obtained such an order from the High Court and had subsequently instituted a suit in which he claimed the property as his own, and obtained a temporary injunction restraining the decree-holder from selling the property, *Held*, that although the court in which the suit had been instituted had no power to

* Civil Revision No. 421 of 1921.

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restrain the District Judge from selling the property yet the latter, in the exercising of his inherent power, should have stayed the sale in order to prevent the decree-holder from committing contempt of court.

Per *Dawson Miller, C. J.*—The High Court was entitled to exercise its powers of superintendence to put the parties in the same position as if no contempt of court had taken place.

Per *Mullick, J.*—In declaring the order of the District Judge to be wrong in the circumstances of the case the High Court was exercising its inherent jurisdiction.

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

S. P. Sen (with him *Chandra Sekhar Banerji*), for the petitioner.

Lal Mohan Ganguli, for the opposite party.

DAWSON MILLER, C. J.—This is a petition on behalf of Maharaj Bahadur Singh asking us to declare that an order for the sale of certain property made by the District Judge of Purnea on the 10th November last was illegal and *ultra vires* or to pass such other orders as we may think fit. The property was ordered to be sold in the executing court. The petitioner was claiming the property as his own and therefore not subject to execution in a suit against the trustee. The question for decision upon the point whether the property was liable to sale or not in execution depended upon whether this particular property belonged to the respondent as part of the trust property of his father or whether it devolved upon him through his mother. His objection to having the property sold was set aside by the executing court and the property was ordered to be sold.

An appeal from that order was lodged in this Court and an application was made which was dealt with here on the 5th November when order was made that if the petitioner paid into court the decretal sum by a certain date the property should not be sold and the sale in the event of the sum not being paid into court was ordered to take place on the 14th November. Subsequently a further application to this Court was

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made and that order was amended as it turned out, which the court was not aware of before, that the 14th November was a public holiday and so the sale which had been adjourned by the previous order was ordered to take place on the 11th November instead. That order was communicated to the learned District Judge in whose court the property was about to be sold. In the meantime the petitioner instituted a suit against the decree-holder claiming this property as his own and as a preliminary measure in that suit, he asked for an *interim* injunction restraining the decree-holder from selling the property. The learned Subordinate Judge of Purnea before whom the application came granted a temporary injunction restraining the decree-holder from selling the property. On the 10th November an application was made to the District Judge in execution praying that the order for the sale of the property should be suspended in consequence of the *interim* injunction made by the Subordinate Judge. What happened on that application was that the learned District Judge had both the order of the Subordinate Judge granting the injunction and the order of the High Court which, so far as its terms went, might be taken as being an order in the nature of a direction to sell the property upon a particular day, and, being uncertain as to which of these two orders he ought to obey, he refused to stay the sale of the property.

It is quite clear that the order of the High Court was in no sense in the nature of a mandatory order directing the property to be sold in any event. It was merely an order staying the sale of the property for a certain time until the petitioner had had an opportunity of paying the money into Court. The sale of the property had already been ordered and the matter before the High Court simply was whether the sale should take place on a certain day or whether that sale should be adjourned. It was never intended by the order of the High Court that, if the sale should be either postponed or set aside for some other reason,

the property nevertheless was to be sold. It is quite clear therefore that the learned District Judge, although from the information he had, which I understand was conveyed by telegram, cannot be blamed for having not fully appreciated the order of the High Court, nevertheless fell into error in considering what he really ought to have done, and it is quite obvious that had he fully appreciated the nature of the order of the High Court he never would in the face of the injunction against the decree-holder have ordered the property to be sold. In fact by so doing he would have been lending himself directly to an attempt by the decree-holder to disobey the order of the Court and to commit a contempt of court.

What subsequently happened was that the sale took place and the petitioner subsequently applied under the provisions of the Civil Procedure Code and paid the decretal amount into court and had the sale set aside. The money has not yet been taken out of court by the decree-holder but we are asked to declare that the sale should be set aside and the parties restored to exactly the same position as if the sale had never taken place. It is contended on behalf of the decree-holder that the learned District Judge in refusing to stay the sale was acting within his jurisdiction and acting regularly within the exercise of that jurisdiction and that therefore we have no power to interfere with his discretion in the matter. What the learned Judge was in fact asked to do was in the peculiar circumstances of the case to exercise his inherent jurisdiction and order the sale not to take place on the ground that the decree-holder had been by injunction restrained from proceeding further by way of sale with the execution of his decree. It may be quite true that the learned District Judge was not personally bound by the order of injunction, and indeed the Subordinate Judge could not have issued any injunction upon the court of the District Judge, but the powers which the learned District Judge was asked to exercise were the inherent powers which he undoubtedly had of taking action in the particular circumstances

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of the case, and we as a court having superintendence over that court are also, I think, entitled to exercise our powers of superintendence over the District Judge, and if we think that he has clearly gone wrong, inadvertently it is true, assisting one of the parties in what amounts to a contempt of the order of the court, then I think we are clearly entitled to take such steps as may be necessary to put the parties in the same position as if no contempt of court had taken place. It was in my opinion a contempt of court on the part of Mr. Forbes, the decree-holder, to insist upon the property being sold after the injunction had been passed by the Subordinate Judge. This is not the place or the time to consider whether the Subordinate Judge was right or wrong in the order he made restraining the sale. That is a matter which may be considered hereafter when the decree-holder appears to shew cause against the rule for the injunction but that injunction having been granted I think that this Court is bound to see that the order of the court is carried out and that the parties against whom the injunction has been granted should not gain any advantage by reason of having acted in a way entirely contrary to that order. The result is that in my opinion we ought to pass an order declaring that the sale which took place on the 11th November should be set aside and treated as of no effect and that the money paid into court by the petitioner in order to have that sale set aside should be restored to him. The result is that the present application is allowed and the sale will be formally set aside as not binding upon the parties and the money already paid into the executing court will be paid back again to the petitioner. I think the petitioner is entitled to his costs of this application.

MULLICK, J.—I agree. I think we are acting in the exercise of our inherent powers in declaring the order of the District Judge to be wrong in the circumstances. The only proper course in this case is to place the parties in the position in which they were before that order was made.

Application allowed.