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a sale as a refusal to exercise jurisdiction and I think that the present application is maintainable under section 115.

The result is that the application is allowed with costs: the order of the District Judge is set aside and that of the Munsif restored. The appellant is entitled to his costs in the Court of the Munsif and the District Judge.

MACPHERSON, J.—I agree.

Application allowed.

APPELLATE CIVIL.

Before Mullick and Macpherson, J.J.

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May, 2.

JUGAL KISHORE NARAYAN SINGH

v.

BHATU MODI.*

Rent Decree—execution of—sale subject to another rent decree—effect of—Estoppel, whether can be based on a representation as to a proposition of law.

Where a holding has been sold in execution of a rent decree it cannot ordinarily be sold again in execution of any other decree for rent due by the same tenants, except where the court has, though irregularly, allowed the holding to be sold subject to a liability to satisfy another outstanding decree, and the auction purchaser is a stranger.

When the auction-purchaser is the decree-holder the exception does not apply.

Therefore, when the holder of two rent decrees causes the holding to be sold in execution of one of the decrees subject to its liability for the other decree, and purchases the holding at the execution sale himself, he is entitled to

* Appeal from Appellate Order No. 248 of 1922, from an order of G. J. Monahan, Esq., r.c.s., District Judge of Monghyr, dated the 29th August, 1922, confirming an order of M. Ihtisham Ali Khan, Subordinate Judge of Monghyr, dated the 20th December, 1921.

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execute the other decree by attachment and sale of properties of the judgment-debtor other than the holding.

An estoppel arises only on a representation which is a statement of fact and not a representation which is a proposition of law.

Haradhan Chatteraj v. Kartik Chandra(1), 'distinguished.
Saiyid Muhammad Jawad Hussain v. Maharaja Kumar Gopal Narain Singh(2), referred to.

Appeal by the decree-holders.

The landlords obtained a rent decree on the 30th July, 1910, in respect of the years 1314, 1315 and 1316, *Fasli*. Subsequently they obtained a rent decree on the 29th August, 1914, in respect of the years 1317 to 1320. In execution of the first decree the holding was sold in July 1915, subject to a liability to satisfy the second decree, and purchased by the decree-holders. The landlords then applied for execution of the second decree by attachment and sale of properties of the judgment-debtor, other than the holding. The application was dismissed and this decision was confirmed on appeal.

K. P. Jayaswal (with him *Bimola Charan Sinha*), for the appellant: The trial Court has held that my second decree must be taken to be satisfied by reason of the statement in the sale proclamation that the holding has been sold subject to its liability under the second decree. The Appellate Court has held that I must first sell the holding before I can proceed against other properties of the judgment-debtor. The law is that a holding cannot be resold for rent which accrued due prior to the sale. The holding ceases to be the property of the tenant and becomes the property of the auction-purchaser free from liability for all rent except that which accrues due after the purchase.

(1) (1901-02) 6 Cal. W. N. 877.

(2) M. As. Nos. 81 and 190 of 1919, decided on the 18th February, 1921, by Mullick and Bucknill, J.J.

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[*Faez Rahman v. Ramsukh Bajpai* (1), *Basanta Kumar Bose v. Khulna Loan Company* (2) and *Saiyid Muhammad Jawad Hussain v. Maharaja Kumar Gopal Narain Singh* (3), referred to]. The statement in the sale proclamation is a mis-statement of law.

Abani Bhushan Mukherjee, for the respondent. The fact that the holding was proclaimed for sale, subject to the other decree, has affected the bidding and has, therefore, raised equities against the decree-holder. The landlord auction-purchaser is estopped from executing the other decree against any other properties until the holding has been resold. [*Haradhan Chatteraj v. Kartik Chandra* (4) and *Gopal Saran Narain Singh v. Sheikh Muhammad Ahsan* (5), referred to].

Jayaswal in reply. The position of the judgment-debtor cannot be held to have been changed. Under the law a holding cannot be sold subject to another rent decree. Every one is presumed to know the law. A mis-statement of law does not give rise to an estoppel. [*Rashdall v. Ford* (6) and *Beattie v. Lord Ebury* (7), referred to].

MULLICK, J.—This case illustrates the difficulties which arise when in execution of a decree for arrears of rent the Court sells the holding subject to a liability for the arrears of years other than those in suit. The matter was considered in this Court in *Saiyid Muhammad Jawad Hussain v. Maharaja Kumar Gopal Narain Singh* (3) and it would seem that here the irregularity has resulted in a loss against which the judgment-debtor can get no relief.

[After stating the facts of the case his Lordship proceeded as follows]: In appeal the learned District Judge held, on the 29th August, 1922, that there was an equitable estoppel in the case and that the proper

(1) (1894) I. L. R. 21 Cal. 169.

(4) (1901-02) 6 Cal. W. N. 877.

(2) (1914) 20 Cal. L. J. 1.

(5) (1909-10) 14 Cal. W. N. 1095.

(3) (1921) 2 Pat. L. T. 248.

(6) I. R. 2 Eq. 750.

(7) 7 Ch. Ap. 777.

course was for the decree-holder to sell the holding first and then if the decree remained unsatisfied to proceed against the other properties of the judgment-debtor.

Now it is settled that after a holding has been once sold in execution of a rent decree, and has passed out of the possession of the tenant, it cannot ordinarily be again sold in execution of any other decree for rent due by the same tenant. An exception, however, has been made in cases where the execution Court, though irregularly, allows the holding to be sold, subject to a liability to satisfy another outstanding decree; in such cases the auction-purchaser is concluded by *res judicata* and the landlord is competent to proceed in the first instance against the holding and to call upon the auction-purchaser to discharge the liability which he has undertaken.

That was the principle of the decision in *Haradhan Chattoraj v. Kartik Chandra* (1) on which the respondent now relies; but that case has no application at all where the decree-holder is himself the purchaser. I take it that the judgment-debtor could not have resisted the attachment of other properties if after the sale the decree-holder had changed his mind and declined to proceed against the auction-purchaser. The law gives the decree-holder an option and I cannot see how any estoppel arises. But it is contended that there was some representation by the decree-holder by reason of which the tenant was induced to change his position. Now the representation must be a statement of fact and not of a proposition of law, and it is clear that the decree-holder has said nothing which he now desires to repudiate. If the representation was that there was a second decree outstanding then there was nothing incorrect in that statement and no question of a change of position by reason of such a representation can arise. If the representation was that the property was in law

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liable to be again sold in execution of the second decree that was a statement of a proposition of law and can not raise an estoppel; and even if the decree-holder had gone so far as to represent that he would not execute the second decree at all except by the sale of the holding (which is not found in this case) the decree-holder would not be estopped by the mere expression of such an intention. It is said that the judgment-debtor might, if he had been aware that the decree-holder would exercise his option as against the other properties, have applied to get the sale set aside under Order XXI, rule 89, Civil Procedure Code. The reply is that the decree-holder has no responsibility in the matter. It may be that the judgment-debtor has been beguiled into a sense of security, but after all that is his own fault. He should have objected at the outset to the irregular sale and not having done so he must suffer the consequences.

The result is that the appeal will be decreed with costs in this Court and the Courts below.

MACPHERSON, J.—I agree.

Appeal decreed.

APPELLATE CIVIL.

Before Das and Kulwant Sahay, J.J.

SANT PRASAD SINGH

v.

SHEODUT SINGH.*

1923.

May, 7.

Provincial Insolvency Act, 1920 (Act V of 1920), sections 2(1)(d), 28 and 47—"Property," meaning of—Joint family property, whether vests in Receiver on insolvency of the father—Receiver, proceeding against, whether leave of court is necessary—secured creditor, right of.

* Appeal from Original Order No. 149 of 1922, from an Order of T. Luby., Esq., I.C.S., District Judge of Saran, dated the 4th April, 1922.