

## APPELLATE CIVIL.

*Before Das and Adami, JJ.*

MUNSHI RAI

*v.*

RUP NARAIN.\*

1927

Jan., 26.

*Code of Civil Procedure, 1908 (Act V of 1908), section 47—joint decree—purchase of property by one of the decree-holders in execution—decretal amount and compensation deposited in court—application by purchaser to withdraw the compensation deposited opposed by the other decree-holder—application allowed—appeal, whether maintainable.*

One of two joint decree-holders obtained permission to bid at the sale held in execution of their decree, and purchased the property put up to sale. Subsequently the judgment-debtor deposited the decretal amount together with 5 per cent. as compensation payable to the auction-purchaser, and the latter applied to withdraw the compensation money. The application was opposed by the other decree-holder but eventually allowed, *ex parte*. A decree was then preferred to the High Court.

*Held*, that the question having arisen not between the parties to the suit but between two decree-holders, the order allowing withdrawal of the compensation money was not an order under section 47 and, therefore, was not appealable.

The compensation paid by a judgment-debtor under Order XXI, rule 89, is payable to the auction-purchaser for compensation for the disappointment caused to him by having the sale set aside and is not compensation paid to the decree-holders as such.

*Appeal by the decree-holder.*

A joint decree was obtained by Munshi Rai, the appellant and Rup Narain Kumar and others, respondents. Certain property belonging to the judgment-debtor was attached and, on the 24th October, 1925, Rup Narain Kumar applied for permission to bid through Babu D. N. Sen, pleader. That application was made on behalf of Rup Narain Kumar only and

\* Appeal from Original Order no. 57 of 1926, from an order of Maulavi Najabat Husain, Subordinate Judge of Bhagalpur, dated the 12th January, 1926.

not on behalf of all the decree-holders. The Court gave Rup Narain Kumar liberty to bid and, at the sale which followed, the property was knocked down to him. The judgment-debtors subsequently paid up the decretal amount together with 5 per cent. as compensation payable to the auction-purchaser. Thereupon Rup Narain Kumar applied for leave to withdraw the compensation money. The application was opposed by Munshi Rai, who contended that he was entitled to a share of the compensation money. On the date when the matter was taken up for hearing Munshi Rai did not appear and his pleader informed the Court that his client was not present in Court. Thereupon the Subordinate Judge passed an order directing that the compensation money be paid to Rup Narain Kumar. The present appeal was against the order of the Subordinate Judge, dated the 12th January, 1926, deciding the matter in favour of Rup Narain Kumar.

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*J. P. Singh*, for the appellant.

*P. B. Ganguli*, for the respondent.

DAS, J., (after stating the facts set out above, proceeded as follows :)

A preliminary point is taken that the order is not appealable. In my opinion the objection is well-founded and must prevail. The question that has now arisen is not between the parties to the suit, but it is a question between two decree-holders. The order is not an order under section 47 of the Code of Civil Procedure and therefore no appeal lies. Apart from this question, I think that the order of the learned Subordinate Judge is right on merits. The compensation under Order XXI, rule 89, of the Code is payable to a purchaser for the disappointment caused to him by having the sale set aside. It is not a compensation paid to the decree-holders as such. This being the position, the compensation money was clearly payable to Rup Narain Kumar. I must therefore dismiss this appeal with costs.

ADAMI, J.—I agree.

*Appeal dismissed.*