

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court dated the 29th January 1930, and the decree of the Subordinate Judge, dated the 30th November 1925, should be set aside, and the suit instituted by Banamali Singh dismissed. The appellants will be entitled to their costs throughout.

Solicitors for appellants : *H. S. L. Polak and Co.*

Solicitors for respondent no. 1 : *Barrow, Rogers and Nevill.*

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AMARENDRA
MANSINGH

v.

SANATAN
SINGH.SIR GEORGE
LOWNDES.

SPECIAL BENCH.

Before Kulwant Sahay, James and Agarwala, JJ.

MAHADEO RAM

v.

RAJA MOHAN VIKRAM SAH.*

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April, 21, 27.

Code of Civil Procedure, 1908 (Act V of 1908), Order XXI, rule 90—auction-purchaser, whether is a person " whose interests are affected by the sale ".

Held, per James and Agarwala, JJ. (Kulwant Sahay, J. dissentiente), that an auction-purchaser of a property in execution of a decree is a person " whose interests are affected by the sale " within the meaning of Order XXI, rule 90, Code of Civil Procedure, 1908.

Khetro Mohan Datta v. Sheikh Dilwar(1) and *Kartik Chandra Chatterji v. Nagendra Nath Ray*(2), overruled.

Bhavisetti Gopala Krishnayya v. Pakanati Pedda Sanjeva Reddy(3), *Ravinandan Prasad v. Jugarnath Sahu*(4) and *S. N. V. R. S. Subramanian Chettyar v. N. L. M. Chettyar Firm*(5), followed.

* Civil Revision no. 261 of 1932, from an order of Babu N. C. Chandra, Subordinate Judge of Motihari, dated the 10th of February, 1932, dismissing an appeal against the order of Babu Parmeshwari Dayal, Munsif of Bettiah, dated the 11th of July, 1931.

(1) (1918) 3 Pat. L. J. 516.

(2) (1923) 5 Pat. L. T. 41.

(3) (1919) 55 Ind. Cas. 333.

(4) (1925) I. L. R. 47 All. 479.

(5) (1927) I. L. R. 5 Rang. 516.

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Surendra Nath Das v. Alauddin Mistry(1), K. V. A. L.*Chettyar Firm v. M. P. Maricar*(2), and *Nihal Chand Gopal**Das v. Pritam Singh*(3), not followed.MAHADEO
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Per KULWANT SAHAY, J. An auction-purchaser is not a person whose interests are affected by the sale within the meaning of the words of Order XXI, rule 90. It is only persons who had any interest in the property before the sale, and which interests are affected by the fact of the property being sold and of its passing out from the judgment-debtor to the purchaser, who can come in under rule 90.

Application by the auction-purchaser.

The facts of the case material to this report will appear from the judgment of Kulwant Sahay, J.

The case was originally heard by a single Judge who passed the following order:—

25-11-1932. KULWANT SAHAY, J.—The question involved in this case is whether an auction-purchaser can apply to set aside the sale under Order XXI, rule 90, of the Code of Civil Procedure. The petitioner purchased the property in execution of a rent decree. He then made an application to the effect that he has subsequently come to know that the sale was not a sale of the holding under a rent decree, but a sale in execution of a money decree, and that the property was subject to certain encumbrances which he as purchaser in execution of a money decree would be liable to pay. He accordingly applied for setting aside the sale. The Courts below have held that he has no *locus standi* to apply and reliance has been placed upon the decision of this court in *Khetro Mohan Datta v. Sheikh Dilwar*(4). Mr. Mitter on behalf of the petitioner contends that this case was wrongly decided, and he refers to a decision of the Allahabad High Court in *Ravinandan Prasad v. Jagannath Sahu*(5). The view taken in the case of *Khetro Mohan Datta*(4) was subsequently affirmed in this court in *Kartik Chandra Chatterji v. Nagendra Nath Roy*(6). Sitting singly I am bound to follow the decision in the two cases of this Court cited above. Mr. Mitter, however, asks me to refer this case for decision to a Bench of two Judges.

Having regard to the importance of the point raised I accede to the prayer of Mr. Mitter, and direct that the case be laid before a Division Bench.

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- (1) (1928) 116 Ind. Cas. 156.
 (2) (1928) I. L. R. 6 Rang. 621.
 (3) (1932) A. I. R. (Lah.) 468.
 (4) (1918) 3 Pat. L. J. 516.
 (5) (1925) I. L. R. 47 All. 479.
 (6) (1923) 5 Pat. L. J. 41.

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When the matter came up before the Division Bench it referred the case to the Special Bench by the following Order of Reference:—

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JAMES AND AGARWALA, JJ.—In this case a certain holding was attached in execution of a decree. A claim was preferred apparently under Order XXI, rule 58, by a co-sharer in the holding, which was allowed, with the result that the interest of the claimant was exempted from attachment. The sale proclamation appears to have been issued without regard to the result of the claim, so that on the face of it, it appeared that the decree-holder in execution of a rent decree was putting up the complete holding for sale. The petitioner now before the Court purchased the holding at the sale; but immediately after his purchase, when he discovered that the decree-holder had no power to bring to sale the property as it was described in the sale proclamation, he applied under Order XXI, rule 90, Code of Civil Procedure, that the sale might be set aside.

Nobody opposed this application, which was indeed supported by the decree-holder; but the Munsif found himself unable to allow it, being bound by the decisions of this Court to the effect that an auction-purchaser was not a person whose interests were affected by the sale within the meaning of Order XXI, rule 90. An appeal to the Subordinate Judge was dismissed on the same ground. This application was originally placed for hearing before Mr. Justice Kulwant Sahay who considered that as the point of law raised was of some importance, the case ought to be heard by a Division Bench. After hearing the arguments for the petitioner, we consider that the application is one which should be heard by a larger Bench.

In *Khetro Mohan Datta v. Sheikh Dilwar*(¹) it was held by this Court (Mullick and Thornhill, JJ.) that the auction-purchaser could not make such an application. That decision was followed in this Court in *Kartik Chandra Chatterji v. Nagendra Nath Roy*(²) when Mullick, J., sitting with Bucknill, J., affirmed his earlier decision. It was followed also by the Rangoon High Court in *Chettyar v. Maricar*(³) and by a Judge of the Calcutta High Court in *Surendra Nath Das v. Alauddin Mistry*(⁴). On the other hand the Madras High Court in *Krishnayya v. Sanjeeva Reddy*(⁵) had held that an auction-purchaser was a person whose interests were affected by the sale within the meaning of Order XXI, rule 90. The Allahabad High Court in *Ravinandan Prasad v. Jagarnath Sahu*(⁶) followed this decision of the Madras High Court and expressly differed from the decision of the Patna High Court in *Khetro Mohan Datta v. Sheikh Dilwar*(¹). In *Chettyar v. Chettyar*(⁷) Brown, J. of the Rangoon High Court having these cases before him preferred the decision of the Allahabad High

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- (1) (1918) 3 Pat. L. J. 516.
 (2) (1923) 5 Pat. L. T. 41.
 (3) (1928) I. L. R. 6 Rang. 621.
 (4) (1928) 116 Ind. Cas. 156.
 (5) (1919) 55 Ind. Cas. 333.
 (6) (1925) I. L. R. 47 All. 479.
 (7) (1927) I. L. R. 5 Rang. 516.

1933. Court to that of this Court, though his own decision on this point was subsequently overruled by a Bench of his own Court in *Chettyar v. Maricar*(1), which I have mentioned above.

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In our judgment, among these conflicting decisions, the reasons originally given by the Judges of the Madras High Court for their decision, and the reasoning of the Judges of the Allahabad High Court and of Mr. Justice Brown, J., of the Rangoon High Court, criticising Mullick, J.'s decision, deserve consideration; and since there are grounds for reconsidering the decision of this Court on the point, we direct that the application be laid before the Chief Justice in order that it may be heard by a larger Bench.

On this reference.

B. N. Mitter (with him *D. N. Das*), for the petitioner: An auction-purchaser is a person whose interests are affected by the sale within the meaning of Order XXI, rule 90. The decisions of this court in *Khetro Mohan Datta v. Sheikh Dilwar*(2) and *Kartik Chandra Chatterji v. Nagendra Nath Ray*(3) are wrongly decided. The Calcutta case of *Surendra Nath Das v. Alauddin Mistry*(4) merely followed the Patna cases.

[SAHAY, J.—How do you criticise *Khetro Mohan Datta v. Sheikh Dilwar*(2)?]

Their Lordships did not apply their minds to the provision of Order XXI, rule 90.

[SAHAY, J.—When the auction-purchaser acquired his interest after the sale, how can his “interests” be affected by the sale?]

There is nothing to confine the “interests” referred to in rule 90, to “interests” acquired prior to the sale.

[SAHAY, J.—If, as you say, the words are so general and wide as to include an auction-purchaser, what was the necessity of the words “person entitled to share in a rateable distribution of assets.....”? Moreover, if your contention be right, the provision of rule 91 would be superfluous.]

(1) (1928) I. L. R. 6 Rang. 621.

(2) (1918) 3 Pat. L. J. 516.

(3) (1923) 5 Pat. L. T. 41.

(4) (1928) 116 Ind. Cas. 156.

The scope of the provisions of rules 90 and 91 is different.

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What would happen if a property subject to an encumbrance is sold and purchased on the footing that no encumbrance exists and subsequently it transpires that the property is subject to an encumbrance? Will the auction-purchaser be left without any remedy?

[SAHAY, J.—Then it follows that whenever any encumbrance is not notified it would be open to the auction-purchaser to apply for setting aside the sale.]

Patna cases have been dissented from by the Madras and Allahabad High Courts—*Bhavisetti Gopala Krishnayya v. Pakanati Pedda Sanjeeva Reddy*(1), *Ravinandan Prasad v. Jaggarnath Sahu*(2)—and also in an earlier case of the Rangoon High Court—*S. N. V. R. S. Subramanian Chettyar v. N. L. M. Chettyar*(3). Two other cases against me are *K. V. A. L. Chettyar Firm v. M. P. Maricar*(4) and *Nihal Chand Gopal Das v. Pritam Singh*(5). I adopt the observations of Sulaiman, J. and Walsh, J. as a part of my argument.

No one for the opposite party.

S. A. K.

Cur. adv. vult.

KULWANT SAHAY, J.—This case has been referred to a Special Bench for a consideration of the question whether an auction-purchaser of a property in execution of a decree is a person “whose interests are affected by the sale” within the meaning of the words in Order XXI, rule 90, of the Code of Civil Procedure.

The facts are that in execution of a decree which purported to be a rent decree a certain holding was

(1) (1919) 55 Ind. Cas. 333.

(2) (1925) I. L. R. 47 All. 479.

(3) (1927) I. L. R. 5 Rang. 516.

(4) (1928) I. L. R. 6 Rang. 621.

(5) (1932) A. I. R. (Lah.) 468.

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advertised for sale. It appears that certain co-sharers in the holding had not been made parties in the rent suit and they made an application under Order XXI, rule 58 of the Code with the result that the share of the objectors was released from attachment and sale. The sale proclamation, however, which related to the entire holding, remained as it was before the objection and the sale took place in accordance with the description of the property as contained in the sale proclamation. The petitioner was the purchaser at the sale, and soon after his purchase he discovered that what he had purchased was not the holding as described in the sale proclamation but only the right, title and interest of the judgment-debtors and that the property that he had purchased was subject to certain encumbrances. He accordingly made an application for setting aside the sale under Order XXI, rule 90, of the Code of Civil Procedure. The decree-holder appeared and filed an application stating that there had been irregularities in the sale and that he and the auction-purchaser had come to an agreement that the sale might be set aside, that the purchase money be refunded to the auction-purchaser, and that the execution case be struck off so that a fresh execution proceeding may be started. The learned Munsif, however, referred to certain decisions of this Court and held that an auction-purchaser is not entitled to apply under Order XXI, rule 90, to set aside a sale and he accordingly rejected the application. On appeal the learned Subordinate Judge concurred with the opinion of the Munsif and held that in face of the rulings of the Patna High Court the application could not be entertained. The auction-purchaser then came in revision to this Court, and the application was first heard by a single Judge who referred it to the decision of a Division Bench. The Division Bench referred the matter to the learned Chief Justice for reference to a Special Bench and the matter has now been heard by us.

The decisions of this Court relied upon in the Courts below are the cases of *Khetro Mohon Datta v. Sheikh Dilwar*(¹) and *Kartik Chandra Chatterji v. Nagendra Nath Ray*(²). In the first case which was decided in the year 1918, Mullick and Thornhill, JJ. held that an auction-purchaser cannot apply to set aside a sale except on the ground that the judgment-debtor had no saleable interest. No reference was made in this case to the provisions of Order XXI, rule 90. In the second case, which was heard in the year 1923, Mullick, J., sitting with Bucknill, J., reiterated the view taken by him in the first case. The provisions of Order XXI, rule 90, were here considered, and a decision of the Madras High Court (given in the year 1919) holding the contrary view was also considered. The learned Judges held that the words "interests affected by the sale" in rule 90 meant interests in the property existing before the sale and which have been adversely affected thereby. Since then it appears that so far as this Court is concerned the question has not again been considered and the law so far as this province is concerned has been as enunciated by Mullick, J.

In the Madras case referred to above [*Bhaviriseti Gopala Krishnayya v. Pakanati Pedda Sanjeeva Reddy*, (³)], the learned Judges held that an auction-purchaser is a person "whose interests are affected by the sale" under Order XXI, rule 90. They seem to be of opinion that the word "interests" in rule 90 means interests in the property, and they held that the interests of the auction-purchaser are affected by the sale inasmuch as he acquires an interest which he did not possess previously. The question came to be considered in the Allahabad High Court in *Ravinandan Prasad v. Jagarnath Sahu*(⁴) and Walsh, J.

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(1) (1918) 3 Pat. L. J. 516.

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(3) (1919) 55 Ind. Cas. 333.

(4) (1925) I. L. R. 47 All. 479.

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criticised the judgments of Mullick, J. in the two Patna cases cited above, and held that the words " whose interests are affected by the sale " are wide enough to include the auction-purchaser. He was of opinion that the Madras Court had put rather a narrow interpretation on the word " interests " inasmuch as it treated the word as being an interest in the property which the purchaser had acquired by the sale. Walsh, J. was of opinion that there was no reason for limiting it to the notion of interests in the property sold, but that having regard to the fact that the plural word " interests " had been used, it covered all interests which were affected by the sale, and that the auction-purchaser's interests were thus affected. The question then came for decision before a single Judge of the Calcutta High Court in *Surendra Nath Das v. Alauddin Mistry*(1). Mitter, J. considered the two decisions of the Patna High Court as well as the decisions of the Madras and the Allahabad Courts, cited above, and was of opinion that the view taken in the Patna cases was the correct view. In the Rangoon High Court, Brown, J. held in *S. N. V. R. S. Subramanian Chettyar v. N. L. M. Chettyar Firm*(2) that the Allahabad decision referred to above put the correct interpretation upon the words in rule 90; but his decision was upset by the Rangoon High Court in *K. V. A. L. Chettyar Firm v. M. P. Maricar*(3) where a Division Bench of that Court agreed with the view taken by the Patna High Court and dissented from the view taken by the Madras and the Allahabad High Courts. In the Lahore High Court, Shadi Lal, C. J. and Broadway, J. [in *Nihal Chand Gopal Das v. Pritam Singh*(4)] agreed with the view taken by the Patna and the Calcutta High Courts and disagreed with the view taken by the Madras and the Allahabad High Courts.

(1) (1928) 116 Ind. Cas. 156.

(2) (1927) I. L. R. 5 Rang. 516.

(3) (1928) I. L. R. 6 Rang. 821.

(4) (1932) A. I. R. (Lah.) 468.

We have thus a conflict of decisions upon the point, the Patna, Calcutta, Lahore and Rangoon High Courts taking one view and the Allahabad and the Madras Courts taking the other view. In this state of conflict of decisions the least that can be said is that the words used by the Legislature in rule 90 are ambiguous. It is open to us in order to find out the intention of the Legislature to examine what was the previous state of the law and whether the Legislature intended to make any change in the law. Under the corresponding provisions contained in Section 311 of the Code of 1882, it had been authoritatively established by the decision of the Privy Council that an auction-purchaser could not apply to set aside a sale on the ground of material irregularity, the words used in section 311 being clear that it was only the decree-holder, or any person whose immovable property had been sold, who could apply to set aside a sale. It had, however, been held by the Courts that under section 311 of the Code of 1882 other persons who had interest in the property, besides the person whose property was sold, could come in and apply for setting aside the sale under the provisions of the section. Did the Legislature intend by using the words in rule 90 of the present Code to change the law so far as the auction-purchaser was concerned? There can be no doubt that the words "whose interests are affected by the sale" are very wide, and following the ordinary meaning of the words an auction-purchaser can be said to be included as such a person; but did the Legislature intend to include him? The provisions as regards setting aside sales are contained in Order XXI, rules 89, 90 and 91 of the present Code. Rule 89 provides for setting aside sale on deposit of certain sums of money by any person either owning the property sold or holding an interest therein by virtue of a title acquired before the sale. Rule 90 provides that a sale can be set aside on the ground of material irregularity or fraud in the publication and conduct of the sale, leading to a substantial injury to the person applying, and the persons who can apply

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under this rule are the decree-holder or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale. Rule 91 then provides for an application to set aside the sale by the purchaser and his right to do so is limited to the ground that the judgment-debtor had no saleable interest in the property sold. These provisions correspond to the provisions contained in sections 310A, 311 and 312 of the Code of 1882. So far as rules 89 and 91 are concerned there has been no alteration. The alteration has been made only in rule 90. Now, if it was intended that an auction-purchaser would be included within the words "whose interests are affected by the sale", there was no reason to retain the provision contained in section 312 of the Code of 1882 and to reproduce it as rule 91 in the present Code. If the purchaser was a person whose interests are affected by the sale, then he could apply under rule 90 even on the ground that the judgment-debtor had no saleable interest. It cannot be assumed that the Legislature omitted to notice that there was a provision in the Code of 1882 contained in section 312 and that that provision was being reiterated in rule 91. It must have been a deliberate act of the Legislature to provide for application by a purchaser to set aside the sale in rule 91 and to limit it only to the ground that the judgment-debtor had no saleable interest in the property. There can be no doubt that it is open to us in order to find out the intention of the Legislature to see what the law on the subject was before the new enactment and whether the Legislature deliberately intended to alter that law—[see *Abdur Rahim v. Abu Mohamed Barkat Ali*(¹), referred to by Mitter, J. in the Calcutta case cited above]. By making an express provision for an application by the auction-purchaser in rule 91, I am of opinion that the Legislature implied his exclusion from rule 90; and after giving the matter my best consideration, I am of opinion that the view taken

(1) (1927) I. L. R. 55 Cal. 519; P. C.

by Mullick, J., which was agreed to by Thornhill and Bucknill, JJ, in the cases cited above, is the correct view. The auction-purchaser is not without his remedy, as he has a right to sue, for the exercise of which right he has got a longer period of limitation and which right would be taken away if it be held that he can come in under Rule 90, inasmuch as a suit by him would be barred under the provisions of rule 92.

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I would, therefore, answer the question arising in the case by saying that an auction-purchaser is not a person whose interests are affected by the sale within the meaning of the words in Order XXI, rule 90, of the Code. It is only persons who had any interest in the property before its sale, and which interests are affected by the fact of the property being sold and of its passing out from the judgment-debtor to the purchaser, who can come in under rule 90. In the present case, however, we find that the decree-holder as well as the auction-purchaser agreed that the sale should be set aside and, in fact, the decree-holder also filed an application to the effect that the sale might be set aside and the execution case struck off without satisfaction, and the judgment-debtor never objected to it. Under those circumstances, upon the application of the decree-holder agreed to by the auction-purchaser and not objected to by the judgment-debtor, I am of opinion that it was within the power of the Court to set aside the sale before it was confirmed, and in the present case the sale ought to have been set aside under the inherent powers of the Court on the agreement of parties even though the application of the auction-purchaser was not maintainable.

JAMES, J.—I agree with the order proposed; but for reasons other than those set out by my learned brother Kulwant Sahay. When this case was originally before the Division Bench, we would have accepted the authority of the decisions of Mullick, J. without

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questioning them, as bound by them whether we approved of them or not if it had not been for the fact that the learned Judge before whom the case originally came had indicated some doubt regarding the correctness of these decisions by the manner of his reference of the case to a Division Bench. Now that it has been referred to a larger Bench for the express purpose of examining the basis of those decisions, it is not possible to avoid consideration of the question of whether they ought to be followed in preference to the decisions of the High Courts of Allahabad and Madras. I need not again describe the effect of those decisions, which have been mentioned in the order recommending reference to a Special Bench. Two other decisions have been cited before us here, indicating a difference of opinion on the question among the Judges of the Lahore High Court, in which the Division Bench accepted the view of Mullick J. But in my judgment the argument of Sir Cecil Walsh, criticising the ground of the decisions of Mullick, J. is quite unanswerable. To my mind the argument in support of Mullick, J.'s decisions, which is based on the ground that any other view would make rule 91 superfluous rests on two mutually repugnant propositions. The first is that the framers of the rule were so extremely careful to avoid anything like surplusage in Order XXI as a whole, that if they had meant what they had said in rule 90, they would necessarily have repealed rule 91. The second proposition is that they were so careless in their amendment of rule 90 that Sir Cecil Walsh, Sir Shah Muhammad Sulaiman, the Judges of the Madras High Court and other Judges of the Rangoon and Lahore High Courts have been unable to discover their true meaning. The correct manner to interpret the rule appears to me to assume that rule 90 as amended means what it says; and if this interpretation renders rule 91 superfluous, the matter must be left at that. The provisions of the old Code, strictly limiting to certain persons the right of preferring an application to set aside a sale

on the ground of material irregularity or fraud in publishing or conducting it were repealed by the new rule 90. Since the rule was so completely changed, we must take it as it stands: and, in my judgment, the view of Sir Cecil Walsh must be accepted, that decisions based on the old rule no longer have any force, since the new rule is certainly not a mere repeal and re-enactment of the old rule. Any person whose interests are affected by the sale may prefer an application under rule 90. It appears to me impossible to hold that the purchaser is not a person whose interests are affected by a court sale. If I sell a horse to *B* it cannot be said that my interests are affected and *B*'s are not. If the word 'interest' is to be used in its narrower sense, it must equally be held that the interest of the auction-purchaser is affected by the transaction which brings it into existence. It certainly cannot be said that I was not affected by the act of the Creator which brought me into existence; and I consider that an interest must be regarded as affected by a transaction which creates it as much as by a transaction which extinguished it. Hence I feel constrained to hold, with Sir Cecil Walsh and Sir Shah Muhammad Sulaiman, and with the Madras High Court, that an auction-purchaser is a person whose interests are affected by the sale, who is entitled to prefer an application under Order XXI, rule 90.

AGARWALA, J.—I agree to the order proposed. With respect to the question whether an auction-purchaser is a person whose interests are affected by the auction sale I respectfully agree with the reasoning of Walsh, J. in *Ravinandan Prasad v. Jagannath Sahu*(¹). It is not disputed that a judgment-debtor is a person whose interests are affected by the sale and I am unable to understand how a transaction which results in the ownership of property being transferred from the judgment-debtor to the auction-purchaser can be said to affect the interests of one and not of

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1933. the other. It has been suggested that a sale, so far as the vendee is concerned, creates an interest but does not affect that interest and that the interest referred to in the rule is an interest in the property which is the subject-matter of the sale. As has been observed by Walsh, J., if the word in the rule were "interest" there might have been something to be said for this contention. But the word used by the Legislature is "interests", and, as has been pointed out in the case of *Dhirendra Nath Roy v. Kamini Kumar Pal*(¹), the word "interests" in rule 90 is not limited to a proprietary or possessory interest in the subject-matter of the sale and does not exclude pecuniary interest.

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It has also been suggested that as rule 91 specifically provides for the setting aside of the sale at the instance of an auction-purchaser on the ground stated therein, an auction-purchaser is impliedly excluded from the category of persons whose interests are affected by the sale within the meaning of rule 90. In my opinion the scope of these two rules is entirely different. Rule 90 provides for the setting aside of a sale on the ground of material irregularity or fraud in the proceedings which have led up to the sale and prescribes the procedure to be followed by persons affected by such irregularity or fraud. Rule 91 applies, however, to an entirely different state of affairs and provides a remedy in a case where the property has been put up to sale in which the judgment-debtor has no saleable interest, and it provides the procedure to be followed by the only person who is interested in having such a sale set aside, viz., the auction-purchaser. It may, however, be contended that the putting up to sale of a property which does not belong to the judgment-debtor is itself a material irregularity and is, therefore, covered by rule 90. But, in my opinion, the words "material irregularity" in rule 90, governed as they are by the words "in

(1) (1924) I. L. R. 51 Cal. 495.

publishing or conducting it", refer only to an irregularity in the *procedure* to be followed before a property is put up to sale, and rule 91 comes into operation in those cases where in spite of the prescribed procedure having been regularly followed property has been sold in which the judgment-debtor had no saleable interest.

Order of Court.

The order of the court is that the order of the court below will be set aside, the sale will also be set aside and the execution case must be dismissed without satisfaction.

Order set aside.

PRIVY COUNCIL.

ANUP MAHTO

v.

MITA DUSADH.

On appeal from the High Court at Patna.

Privy Council Practice—Record on Appeal—Value of Subject-Matter—Report—Code of Civil Procedure (V of 1908), Order XLV, r. 5.

When on a petition to the High Court for a certificate that a case is a fit one for appeal to the Privy Council a question has arisen as to the value of the subject-matter and a report thereon has been ordered under Order XLV, rule 5, the report and full information on the matter should be included in the record in the appeal to the Privy Council.

Preliminary objection rejected.

Appeal (No. 113 of 1929) from a decree of the High Court (February 22, 1928) reversing a decree of the Subordinate Judge of Patna (April 21, 1925) on appeal from a decree of the third Munsif of Patna.

*PRESENT: Lord Blanesburgh, Lord Macmillan and Sir George Lowndes.

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v.

RAJA MOHAN
VIKRAM SAH.

AGARWALA,
J.

J. C.*
1933.

May, 5.