

the form of judgment, which will be appropriate will be simply to dismiss the appeal with costs, and their Lordships will humbly advise His Majesty accordingly.

A. M. T.

*Appeal dismissed.*

Solicitors for Appellants : *Ranken Ford and Chester.*

Solicitors for Respondents : *Chapman-Walker and Shephard.*

## APPELLATE CIVIL

*Before Mr. Justice Harrison and Mr. Justice Zafar Ali.*

1923

May 8.

ASAD ULLAH KHAN AND ANOTHER—(DEFENDANTS)  
Appellants

*versus*

KARAM CHAND AND WADAYA RAM—(PLAINTIFFS)  
Respondents.

Civil Appeal No. 2449 of 1921.

*Civil Procedure Code, Act V of 1908, Order XXI, rules 58, 91, 92, 93—Whether auction purchaser who has paid the full price and is dispossessed of the property by a successful claimant can sue to recover the money.*

*Held, that an auction purchaser who has paid the full price can bring a suit to recover that money, on being dispossessed of the property by a successful claimant who had lodged an unsuccessful objection under Order XXI, rule 58 of the Code of Civil Procedure, and subsequently brought a suit and established his right to the property.*

*Prasanna Kumar v. Ibrahim Mirza (1), followed.*

*Ram Sarup v. Dalpat Rai (2), dissented from.*

*Bhagwan Das v. Allah Bakhsh (3), distinguished.*

*Rustomji Ardeshir Irani v. Vinayak Gangadhar Bhat (4),*

*Nannu Lal v. Bhagwan Das (5), and Bindeshri Prasad v. Badal Singh (6), referred to.*

*Miscellaneous appeal from the order of Rai Bahadur Lala Ganga Ram Soni, District Judge, Multan, dated the 11th July 1921, reversing that of Mirza Nawzash Ali Khan, Junior Subordinate Judge, Multan, dated the 15th March 1921, and remanding the case.*

(1) (1917) 36 Cal. L. J. 205.

(2) (1920) I. L. R. 43 All. 80.

(3) 52 P. R. 1919.

(4) (1910) I. L. R. 35 Bom. 29.

(5) (1916) I. L. R. 39 All. 114.

(6) (1923) 21 All. L. J. 228, 230 (F.B.).

NIJAZ ALI, for Appellants.

HARGOPAL, for Respondents.

1923

ASAD ULLAH

KHAN

v.

KARAM CHAND

The judgment of the Court was delivered by—

HARRISON J.—The only point which arises in this appeal is whether an auction purchaser, who has paid the full price can bring a suit to recover that money on being dispossessed of the property by a successful claimant, who had lodged an unsuccessful objection under rule 58 and subsequently brought a suit and established his right to the property. The trial Court held that the suit did not lie. The learned District Judge has held that it does. Counsel for the appellants relies on *Ram Sarup v. Dalpat Rai* (1) and an earlier ruling of the Allahabad Court, quoted therein, *Nannu Lal v. Bhagwan Das* (2). He also cites *Bhagwan Das v. Allah Bakhsh* (3) which is not in point as there the question was of a defective and not of a wholly non-existent title in the judgment debtor.

Counsel for the respondents on the other hand quotes *Prasanna Kumar v. Ibrahim Mirza* (4), *Rustomji Ardeshr Irani v. Vinayak Gangadhar Bhat* (5), and *Bin-deshri Prasad v. Badal Singh* (6), more especially the portion at the end of page 230. The position taken up by Counsel for the appellants is that the procedure laid down in rules 91, 92 and 93 of Order XXI is exhaustive and excludes a suit. He concedes that once the month has expired and the sale has been confirmed, the question cannot be re-opened under Order XXI as no application lies under rule 91, and he contends that whereas here an objector makes a claim under rule 58, which is decided against him, the sale then takes place, and the purchaser, fortified by the failure of the unsuccessful objection pays his money and has the sale confirmed, he is debarred from seeking any sort of remedy if in a subsequent suit the same objector succeeds in establishing his title. This view is supported by *Ram Sarup v. Dalpat Rai* (1) which lays down that the only remedy open to the auction purchaser is an application under Order XXI and, that if in ignorance of the true facts, he fails to make such an application within time he must take the consequences and the

(1) (1920) I. L. R. 43 All. 60.

(2) (1916) I. L. R. 39 All. 114.

(3) 52 P. R. 1919.

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(5) (1910) I. L. R. 35 Bom. 29.

(6) (1923) 21 All. L. J. 228, 230 (F. B.)

judgment-debtor is entitled to take credit for the price of property not belonging to him. With this view we do not agree. We find ourselves in complete accord with that expressed in *Prasanna Kumar v. Ibrahim Mirza* (1) and the authorities there cited and we are of opinion that the suit by the auction purchaser lies. The summary remedy prescribed in Order XXI does not exclude a suit of this nature where there has been a complete failure of consideration and this more especially where there has been an adjudication, though not a final adjudication, in favour of the title of the judgment-debtor.

The appeal is therefore dismissed with costs.

A. R.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice Lumsden.*

ISHAR SINGH AND OTHERS (PLAINTIFFS) Appellants

*versus*

SURAT SINGH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2340 of 1920.

*Custom—Adoption—by written deed—whether it can be treated as a gift—where Court finds that there has been no adoption in fact.*

One G. S. executed a deed of adoption in favour of defendant S. S. The plaintiffs, collaterals of G. S., brought the present suit to have it declared that the deed should not affect their rights of succession to G. S.'s estate. The District Judge held, concurring with the trial Court, that S. S. was never actually adopted, but treating the deed of adoption as a deed of gift gave a declaration in favour of S. S.'s right to succeed to the estate of G. S. The deed contained merely a declaration of adoption, and made no reference to any property belonging to G. S.

*Held*, that when a deed contains a testamentary disposition in favour of a person believed to be the adopted son, it is a question for consideration whether on the failure of adoption the gift also fails. This is the law with respect to cases where there is an express gift or bequest in favour of an alleged adopted son.