

APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Doyle.

K.V.A.L. CHETTYAR FIRM

v.

M. P. MARICAR.*

1928

June 27.

Auction-purchaser at Court-sale—Whether he can apply to set aside sale under O. 21, r. 90, of the Civil Procedure Code (Act V of 1908)—“Interests affected by the sale”, meaning of.

An auction-purchaser at a Court-sale cannot apply under the provisions of O. 21, r. 90, of the Civil Procedure Code to set aside the sale on the ground of fraud or material irregularity. He is not a person “whose interests are affected by the sale” within the meaning of that rule. His interests come into effect after the sale, whilst the rule applies to interests existing at the time of the sale.

Khatro Mohan v. Sheikh Dilwar, 3 Pat. L.J. 506—*followed*.

Ravinandan Prasad v. Jagarnath, 47 All. 479; *S.N.V.R.S. Chettyar v. N.L.M. Chettyar Firm*, 5 Ran. 516—*dissented from*.

K. C. Bose for the appellant.

N. N. Burjorjee for the respondent.

DAS and DOYLE, JJ.—The respondent, who was the auction-purchaser, applied for the sale to be set aside on the ground of fraud under Order XXI, rule 90, of the Code of Civil Procedure. The District Court set aside the sale, and the decree-holder has now appealed against that order.

It is contended before us that an auction-purchaser is not a person whose interests are affected by the sale under Order XXI, rule 90, of the Code of Civil Procedure. It is admitted that if he is not a person whose interests are affected by the sale he cannot apply under that Order to set aside the sale.

We have no hesitation in holding that the words “whose interests are affected by the sale” in the

* Civil Miscellaneous Appeal No. 37 of 1928 against the order of the District Court of Insein in Civil Execution No. 24 of 1926.

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abovementioned order mean persons who have some interest in the property at the time of the sale. The auction-purchaser's interest only comes into effect after the sale, and it cannot be said that his interests are in any way affected by the sale.

Our attention was drawn to a decision of Brown, J., in the case of *S.N.V.R.S. Subramanian Chettyar v. N.L.M. Chettyar Firm and others* (1). In that case Brown, J., following a decision of the Allahabad High Court in the case of *Ravinandan Prasad v. Jagarnath Sahu* (2), held that an auction-purchaser is a person whose interest is affected by the sale, and, therefore, could apply under Order XXI, rule 90, of the Code of Civil Procedure, to set aside the sale.

We must say that we do not agree with this decision of Brown, J. The reasoning of the learned Judges of the Allahabad High Court in the case of *Ravinandan Prasad v. Jagarnath Sahu* does not appear to us to be sound. The learned Judges seem to think that the use of the word "interests" instead of "interest" in the rule makes a difference in the meaning of the words in that rule. We must say that we cannot follow this reasoning.

It is quite clear to our mind that the word "interests" mentioned in that rule refers to interest existing at the time of the sale and not to interest created by the sale. The only rule under which an auction-purchaser can apply to set aside the sale is Order XXI, rule 91, of the Code of Civil Procedure, and if the Legislature had intended to allow an auction-purchaser to apply under Order XXI, rule 90, of the Code of Civil Procedure, his name would have been specifically mentioned in that rule.

(1) (1927) 5 Ran. 516.

(2) (1924) 47 All. 479.

We are fortified in this opinion by a decision of the Patna High Court in the case of *Khetra Mohan Datta v. Sheikh Dilwar* (1). Brown, J., was mistaken in thinking that the Patna Law Journal was not an authorized report. It was the authorized report of the Patna High Court till the Patna series of the Indian Law Reports was started.

We, therefore, allow this appeal and set aside the order of the District Judge with costs three gold mohurs in both Courts.

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APPELLATE CIVIL.

Before Sir Henry Pratt, Kt., Officiating Chief Justice, and Mr. Justice Cunliffe.

CHAN PYU

v.

SAW SIN AND OTHERS.*

1928
July 4.

Chinese Customary Law—Customary right to make a will and law of inheritance—Burmese Buddhist Law, how far applicable to domiciled Chinese—Burma Laws Act (XIII of 1898), s. 13—Buddhist law in Burma, whether it means only Burmese Buddhist law—Principle of Ma Yin Mya's case whether applicable to marriages alone or also to succession and testamentary dispositions—Lex contractus and lex fori—Keittima adoption, requisites of—Custom to have force of law, requisites of—Importation of foreign custom—Personal law carried to other parts of Empire by emigrants—Principle of justice, equity and good conscience.

A Chinese Buddhist whose domicile was Burma married a Burmese Buddhist lady. He was also a Taoist and a Confucian and observed many Chinese customs. He died leaving a will. Plaintiff claimed to be the *keittima* adopted son of the deceased and contended that Burmese Buddhist law applied in this case and that therefore the deceased was not entitled to make a will. He claimed inheritance on an equality with the natural sons of the deceased.

Held, on the evidence that plaintiff had failed to prove that he was a *keittima* son and had no claim to inherit under Burmese Buddhist law.

In a series of cases in Burma the Courts have recognized and held that Chinese customary law governs the succession to the estate of a Chinaman, domiciled in Burma. The right of the Chinese to make wills has also been recognized.

(1) (1918) 3 Patna Law Journal 516.

* Civil First Appeal No. 87 of 1928 against the judgment of the Original Side in Civil Regular No. 13 of 1927.