

1928

A. K.
MOOPAN
v.
A.
KARUPANAN.

DAS AND
DOYLE, JJ.

Additional District Judge was, therefore, not justified in passing a decree in favour of the plaintiff-respondent without at least hearing formal evidence.

[Their Lordships held that appellant was led to understand that there would be a settlement of the case by arbitration and that in any case the time allowed to him to file his written statement was too short, and so remanded the case.]

APPELLATE CIVIL.

Before Mr. Justice Brown.

MAUNG NAUNG

v.

MAUNG BA GYI AND ONE.*

1928

April 2.

Purchaser at Court auction—Remedy if judgment-debtor has no saleable interest—No warranty of title—Purchaser's right and remedy restricted to statutory enactment—Civil Procedure Code (Act V of 1908), O 21, rr. 91, 92, 93—Remedy by way of suit, when allowed.

Held, that an auction-purchaser at a Court sale may apply under O. 21, r. 91, of the Civil Procedure Code, within 30 days from the date of sale, to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold, and if the sale is set aside under rule 92, the purchaser is entitled to an order for refund of his money under rule 93. There is no warranty of title, express or implied, either by the decree-holder or by the Court in case of execution sales; so the purchaser's remedy is restricted to that prescribed by the statute that creates his right. He cannot file a suit against the decree-holder for the return of his money, unless the question is outside the scope of these rules.

Soolayman v. S. S. A. O. Chetty Firm, 10 L.B.R. 76—*followed*.

Rishikesh Laha v. Manik Molla, 53 Cal. 758—*distinguished*.

Bhattacharyya for the applicant.

BROWN, J.—The petitioner, Maung Naung, bought certain properties at a Court sale in execution of a decree in the year 1922. One Maung Kyi then started

* Civil Revision No. 76 of 1928 against the order of the District Court of Meiktila in Civil Appeal No. 101 of 1927.

litigation, claiming the land as his and not that of the judgment-debtor, and the final result was that Maung Naung lost the land which he bought. He then on the 19th of August, 1927, nearly five years after the sale, applied for an order against the judgment-creditor to refund to him the purchase money. The trial Court passed an order in his favour, and against this order two of the judgment-creditors, Maung Ba Gyi and Ma Chit Me, appealed. Their appeal was allowed and the order of refund set aside. An application has now been filed in revision to set aside the order of the District Court.

At a Court auction in execution of a sale, what is sold is the right, title and interest of the judgment-debtor, and there is no warranty, express or implied, that the judgment-debtor had any saleable interest in the property sold. This was held in the case of *Soolayman Cassim Simji v. S. S. A. O. Chetty Firm* (1). It was also held that in a case such as the present, where it subsequently turns out that the judgment-debtor had no interest in the property sold, the auction-purchaser has no remedy by way of suit against the original judgment-creditors.

I have been referred on behalf of the petitioner to the case of *Rishikesh Laha v. Manik Molla and others* (2); but I cannot find that this case in any way helps the petitioner. It is true that it was there held that an auction-purchaser might have a remedy in certain circumstances, such as that of fraud on the part of the judgment-creditor. But the general rule was accepted that in such cases the auction-purchaser would ordinarily have no right of suit. Fraud on the part of the judgment-creditor is not alleged here, and I cannot see that this application has any merits.

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 BROWN, J

(1) (1919) 10 L.B.R. 76.

(2) (1926) 53 Cal. 758.

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BROWN, J.

It is suggested that no appeal lay to the District Judge. The trial Court apparently purported to act under section 144 of the Code of Civil Procedure; and, if its order was passed under that section, then it is clearly appealable. But the matter appears to me to be only of academic interest. If this application were admitted on the ground that the District Court had no jurisdiction, all that could be done would be to set aside the order of the learned District Judge and then to pass precisely a similar order in revision here. That being so, there seems to me to be no ground for entertaining this application in revision.

The application is dismissed.

APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Doyle.

U MAUNG GYEE

v.

U BA TIN.*

1928

April 24.

Elections Offences and Inquiries Act (XXXIX of 1920), s. 12—Election Commissioners' report recommending costs—Order of His Excellency the Governor silent as to costs—Application for execution as to costs without the order as to costs, effect of—Court's power to examine report—Subsequent order as to costs, effect of—Analogy of a Court's judgment and decree.

Held, that under the provisions of s. 12 of the Indian Elections Offences and Inquiries Act, the Court has no power to examine the report of the Election Commissioners to see their recommendations as to costs, and to issue execution as to costs on the order of His Excellency the Governor of Burma passed on such report but which order is silent on the question of costs. The application for execution must be dismissed, if, on the date of such application, no order as to costs existed, notwithstanding the fact that a subsequent order of His Excellency as to costs is produced at the hearing of the application. There is no analogy between the judgment of a Court followed by a decree, and the report of the Election Commissioners followed by an order of His Excellency the Governor.

* Special Civil First Appeal No. 312 of 1927.