

LETTERS PATENT APPEAL.

Before Justice Sir Henry Scott-Smith and Mr. Justice Martineau.

1925

Feb. 18.

PARJA MAL-CHANDI MAL (JUDGMENT-DEBTOR),
Appellant,

versus

MUL CHAND-MURARI LAL (DECREE-HOLDER),
Respondent.

Letters Patent Appeal No. 221 of 1924.

Civil Procedure Code, Act V of 1908, section 47 and Order XXI, rule 90—Order of executing Court dismissing objections to sale of the judgment-debtor's property to the decree-holder—Whether a decree.

In execution of a decree land belonging to the judgment-debtor was sold by auction on the 21st March 1923 and was purchased by the decree-holder, who had obtained permission to bid. Objections to the sale were lodged by the judgment-debtor on the 21st April 1923, but the Subordinate Judge dismissed them as time-barred. On appeal the Additional Judge held that as 25 per cent. of the purchase money had not been deposited the sale was not complete on the 21st March 1923 and the objector's application was therefore within time, and he remanded the case for a fresh decision. The decree-holder applied to the High Court for revision of the order of the Additional Judge, and a Judge in Chambers restored the order of the Subordinate Judge. The judgment-debtor then preferred an appeal under the Letters Patent.

Held, that the order of the Subordinate Judge was one passed under Order XXI rule 90 of the Code of Civil Procedure and was not a decree, and that therefore no second appeal lay to the High Court. The order of the Judge in Chambers was one passed on an application for revision and no appeal lay from it under the Letters Patent.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice LeRossignol, dated the 27th February 1924.

JAGAN NATH AGGARWAL, for Appellant.

ANANT RAM and RAM CHAND MANCHANDA, for Respondent.

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PARJA MAL-
CHANDI MAL

v.

MUL CHAND
MURARI LAL.

The judgment of the Court was delivered by—

MARTINEAU J.—In execution of a decree land belonging to the judgment-debtor was sold by auction by the Tahsildar on the 21st March 1923, and was purchased by the decree-holder, who had obtained permission to bid. Objections to the sale were lodged on the 21st April 1923, but the Subordinate Judge dismissed them as time-barred and confirmed the sale. On appeal the Additional Judge held that as a deposit of 25 *per cent.* of the purchase money, had not been made, as required by Order XXI, rule 84 (1) of the Civil Procedure Code, the sale was not complete on the 21st March 1923, and the judgment-debtor's application for having the sale set aside was therefore within time, and he set aside the order of the Subordinate Judge and remanded the case for a fresh decision. The decree-holder applied to this Court for revision of the order of the Additional Judge, and the application was accepted by a Judge in Chambers and the order of the Subordinate Judge restored.

The judgment-debtor has preferred an appeal under the Letters Patent, and it is contended on his behalf that there was no complete sale, that the Subordinate Judge's order was consequently not one passed under Order XXI, rule 90, Civil Procedure Code, but was one under section 47 and amounted to a decree, and that therefore a second appeal lay to this Court and the order of the Judge in Chambers should be treated as one passed in a second appeal and is appealable under the Letters Patent.

* * * * *

We are clearly of opinion that the order of the Subordinate Judge was one passed under Order XXI rule 90 of the Civil Procedure Code and was not a decree, and that therefore no second appeal lay to this Court. The order of the learned Judge in Chambers was an order passed on an application for revision and no appeal lies from it under the Letters Patent. The appeal is accordingly dismissed with costs.

C. H. O.

Appeal dismissed.

REVISIONAL CIVIL.

Before Justice Sir Henry Scott-Smith and Mr. Justice Martineau.

NANAK CHAND-MUKANDI LAL (PLAINTIFF)

Petitioner,

versus

EAST INDIAN RAILWAY (DEFENDANT)

Respondent.

Civil Revision No. 56 of 1924.

Parties to Suit—suit for damages against a Railway Company brought against the Agent of the Company—Amendment to Company's name after expiry of period of limitation—Misdescription.

A suit for damages was instituted on 14th February 1922 against the Agent, E. I. Railway, and others. On 19th April 1922 the Attorney of the Railway applied to have *ex parte* proceedings set aside, and on 15th May 1922 he filed written pleas on behalf of the Railway. In these pleas no objection was taken to the description of the defendant. On 18th June 1923 plaintiff asked for permission to amend the plaint by changing the description of the defendant to "E. I. Railway, through the Agent." This amendment was made and the lower Court then dismissed the suit as time-barred, holding that the Railway was no party to the suit until the date on which the amendment was made.

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Feb. 26.