

## APPELLATE CIVIL.

*Before Mr. Justice Heald.*

MAUNG PE SEIN AND OTHERS

v

MA THIN MYA.\*

1929

Jan. 3.

*Appeals from orders—No second appeal from orders on appeal—Civil Procedure Code (Act V of 1928), s. 104 (2); O. 43, r. 1 (j)—No second appeal from order on appeal reversing an order of the first Court—Burma Courts Act (Burma Act XI of 1922), s. 11.*

An appeal from an order under O. 21, r. 92 of the Civil Procedure Code lies under O. 43, r. 1 (j), but under s. 104 (2) no further appeal lies from an order passed in such appeal. The provisions of s. 11 of the Burma Courts Act do not affect those of s. 104 of the Code, so that where a District Court reverses on appeal the order of a Township Court setting aside a sale under O. 21, r. 89, no second appeal lies to the High Court.

*Po Aye* for the appellants.

HEALD, J.—In Suit No. 106 of 1926 of the Township Court of Bilin the present respondent obtained a decree against Po Kyaw, now represented by the appellants, for partition and possession of a house and its site or for Rs. 650, as representing the value of her half share of the property.

In Execution Case No. 179 of 1926 of the same Court respondent applied for execution of that decree, and by consent the whole property was sold by Court auction, each party to be allowed to bid at the auction and the costs to be recovered from Po Kyaw's half share of the sale proceeds.

The property was bought in by respondent for Rs. 870.

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\* Special Civil Second Appeal No. 391 of 1928 against the order of the District Court of Thatôn in Civil Miscellaneous Appeal No. 169 of 1927.

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Po Kyaw applied for the sale to be set aside under the provisions of Order XXI, rule 89 on his paying into Court Rs. 870, the price paid for the property at the auction.

The Judge ordered that the sale should be set aside on Po Kyaw's depositing Rs. 43-8-0 as being five per cent. of the purchase money, together with Rs. 435, as being half the purchase money, only a half share of the property having in effect been sold, and Rs. 193-12-0 on account of costs. A sum of Rs. 672-4-0 was accordingly deposited by Po Kyaw and the sale was set aside.

Respondent appealed against the order setting aside the sale, and the lower Appellate Court set aside that order.

Appellant comes to this Court in second appeal but it seems clear that no second appeal lies.

An appeal from an order under Order XXI, rule 92 lies under Order XLIII, rule 1 (*j*), and under section 104 (2) of the Code no further appeal lies from any order passed in such appeal. In my view the provisions of section 11 of the Burma Courts Act, do not affect those of section 104 of the Code.

I therefore hold that the present appeal does not lie and I dismiss it.