

THE
INDIAN LAW REPORTS.
LAHORE SERIES.

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Jai Lal.

NAND KISHORE (PLAINTIFF) Appellant

versus

SULTAN SINGH AND ANOTHER (DEFENDANTS)
Respondents.

Civil Appeal No. 2567 of 1916.

Civil Procedure Code, Act V of 1908, section 47, Order XXI rule 92 (3)—Sale in execution confirmed—Suit to contest validity of—whether competent — and if not, whether it can be treated as an application under section 47.

The plaintiff sued for a declaration regarding the ownership of a part of the property sold in execution proceedings, alleging that he (the plaintiff) had purchased it from the judgment-debtor prior to the sale in execution.

Held as regards the applicability of section 47 of the Civil Procedure Code that the position of the plaintiff, who was himself one of the judgment-debtors and alleged that he had purchased from the judgment-debtor against whom the execution proceedings were taken, was distinguishable from that of one who seeks to obtain possession of property on the strength of a sale in execution which has taken place in his favour.

Chotha Ram v. Mst. Karmon Bai (1), and *Bhagwati v. Banwari Lal* (2), distinguished.

Held further, that whether or not section 47 of the Code applied, the sale having been confirmed and become absolute, the present suit, in which the plaintiff was virtually seeking to have the sale set aside, was barred by Order XXI rule 92 (3).

(1) S.P.R. 1918.

(2) (1908) I.L.R. 31 All. 82 (F.B.).

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Held also, that as the plaint was not presented to the Executing Court it could not now be treated as an application under section 47 of the Code.

First appeal from the decree of Lala M Lal Khosla, Senior Subordinate Judge, Ist the 30th May 1916, dismissing the plaint

M. S. BHAGAT, for Appellant.

SARDHA RAM AND JAGAN NATH BHA
Respondents.

The judgment of the Court was delivered:

MARTINEAU J.—One Shafkat Ullah mortgaged his Re. 0-3-9½ share in certain shops to the defendants, who in 1914 obtained a decree in the Court of the District Judge of Delhi for sale on the mortgage. The property was sold in execution and purchased by the defendants themselves with the permission of the Court. The sale was confirmed and formal possession was delivered to the defendants. The present plaintiff Nand Kishore was a party to the suit brought on the mortgage and was one of the judgment-debtors, but the application for execution was made against Shafkat Ullah only and it was only his share which purported to be sold. The plaintiff alleges that he had purchased a Re. 0-3-4 share in the property from Shafkat Ullah in 1912, that after that only a Re. 0-0-5½ share remained with Shafkat Ullah, and that the sale of a share in excess thereof in the execution proceedings was invalid, and he asks for a declaration that he is the owner of a Re. 0-3-4 share. The suit has been dismissed as barred by section 47 of the Civil Procedure Code and the plaintiff appeals.

Reliance is placed for the appellant on *Chotha Ram v. Mussammatt Karmon Bai* (1), which followed *Bhagwati v. Banwari Lal* (2). In those cases it

(1) S P.R. 1918.

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was held that a decree-holder who purchases at an auction sale with the permission of the executing Court occupies the same position as any other auctioneer: that a question arising between him and

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IN Debtor whose property has been sold, possession thereof, after the confirmation of is not a question relating to the execution, or satisfaction of the decree; and that the holder is not precluded by the provisions of *Before* 47 of the Civil Procedure Code from bringing a separate suit to recover possession of the property purchased by him. It is to be observed that those were cases in which the plaintiff was seeking to obtain possession of the property on the strength of the sale which had taken place in his favour, and are therefore not applicable to the present case, in which the plaintiff is seeking to avoid the sale, which he contends was invalid. Further, whether or not section 47 of the Civil Procedure Code applies, we are of opinion that, the sale having been confirmed and become absolute, the present suit, in which the plaintiff is virtually seeking to have the sale set aside, is barred by Order XXI, rule 92 (3).

The appellant has also asked that if the suit does not lie his plaint may be treated as an application under section 47, but we are not prepared to grant this request, seeing that the plaint was not presented to the executing Court, which was the Court of the District Judge, but to the Court of a Subordinate Judge.

We accordingly dismiss the appeal with costs.

N. F. E.

Appeal dismissed.