

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

YELLAPPA (ORIGINAL DEFENDANT No. 2), APPELLANT, v. RAMCHANDRA
AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1896.

January 9.

*Execution—Execution sale—Sale in execution of decree already satisfied—
Bond-fide purchaser at such sale—Right of such purchaser.*

Where a person, a stranger to the proceedings, purchases property *bond fide* at an auction sale held in execution of a decree, the sale to him cannot be set aside on the ground that the decree had already been satisfied out of the Court at the time the sale was held.

Rewa Mahton v. Ram Kishen (1) and *Mothura Mohun v. Akhoy Kumar* (2) followed.

SECOND appeal from the decision of J. B. Alcock, District Judge of Sholápur-Bijápur, reversing the decree of Ráo Sáheb V. V. Tilak, Subordinate Judge of Bijápur.

Suit to set aside a sale in execution. In 1884 a decree was obtained by one Fulchand against Rámchandra and others (present respondents), and on the 20th July, 1886, in execution of that decree certain land was sold and was purchased by Yellappa (the appellant).

In the same year Ramchandra applied to set aside the sale, alleging that Fulchand's decree had been satisfied and that Yellappa, the purchaser, had had full notice of the fact. The Court, however, refused to set aside the sale, but found that the decree had been satisfied, and ordered that the purchase-money paid by Yellappa should be paid to Ramchandra.

The plaintiffs (Ramchandra and others) thereupon brought this suit, praying that the sale to Yellappa might be set aside on repayment by them to Yellappa of his purchase-money.

The Subordinate Judge dismissed the suit, holding that although the decree had been satisfied, Yellappa was a *bond fide* purchaser for value without notice of the satisfaction of the decree.

* Second Appeal, No. 8 of 1895.

(1) L. R., 13 I. A., 106.

(2) I. L. R., 15 Cal., 557.

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The plaintiffs appealed. The appellate Court following the ruling in *Ganga Pershad v. Gopal Singh*⁽¹⁾ reversed the decree, holding that a sale in execution of a decree by accident or mistake after the decree had been satisfied was of no effect. The Judge, therefore, directed that possession be restored to plaintiffs on their paying the amount of purchase-money to Yellappa. Yellappa preferred a second appeal.

Shamrao Vitthal for the appellant (defendant):—The Judge was wrong in holding that because the decree was satisfied out of Court, the Court sale in execution did not confer any right on us as purchaser. We purchased the property *bond fide* for value without notice of satisfaction of the decree. The Court sale was legal and we are entitled to hold the property—*Mothura Mohun v. Akhoy Kumar*⁽²⁾; *Rewa Mahton v. Ram Kishen*⁽³⁾.

Ganesh K. Deshmukh for the respondents (plaintiffs):—The question is who is to suffer. We had satisfied the decree before the sale took place, and we contend that, therefore, the sale was inoperative and conferred no title on the purchaser—*Ganga Pershad v. Gopal Singh*⁽¹⁾; *Pat Dasi v. Sharup Chand Mala*⁽⁴⁾.

FARRAN, C. J.:—The case is, we think, concluded by authority later than the case upon which the District Judge has relied. The Privy Council in a case very analogous to the present has decided that where a person, a stranger to the proceedings, purchases property *bond fide* at an auction sale held in execution of a decree, his sale cannot be set aside on the ground that the existence of a cross decree rendered the sale in execution improper. "If the Court has jurisdiction," their Lordships say, "a purchaser is no more bound to inquire into the correctness of an order for execution than he is as to the correctness of the judgment upon which the execution issues"—*Rewa Mahton v. Ram Kishen*⁽³⁾. In a case almost on all fours with the present, the Calcutta High Court followed the principle laid down by the Privy Council and applied it—*Mothura Mohun v. Akhoy Kumar*⁽²⁾.

(1) I. L. R., 11 Cal., 136.

(2) I. L. R., 15 Cal., 557.

(3) L. R., 13 I. A., 106.

(4) I. L. R., 14 Cal., 376.

In the case relied on by the District Court, fraud was alleged, and that possibly may distinguish it from the later case; but whether that be so or not, we consider that the latter was correctly decided, and must, therefore, follow it. We reverse the decree and restore that of the Subordinate Judge, with costs in both appellate Courts on respondents.

Decree reversed.

1896.

YELLAPPA
v.
RAMCHANDRA,
DEA.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

VYANKATESH CHIMAJI JOSHI AND ANOTHER (ORIGINAL DEFENDANTS),
APPELLANTS, v. SAKHARAM DAJI GANPULE (ORIGINAL PLAINTIFF),
RESPONDENT.*

1896.

January 8.

Award—Decree upon an award—Res judicata—Civil Procedure Code (Act XIV of 1882), Secs. 13 and 522.

A judgment and decree passed in terms of an award under section 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata*.

Wazeer Mahton v. Chuni Singh (1) followed.

SECOND appeal from the decision of A. S. Moriarty, Acting District Judge of Ratnágiri, in Appeal No. 164 of 1894.

Plaintiff alleged that he was a pujári of the shrine of Parshuram near Chiplún and that the defendant was the manager of the shrine; that as such manager the defendant had to make certain payments to the family to which he (the plaintiff) belonged; and that he (the plaintiff) was entitled to a share of such payments; that in 1892 he had brought a suit (No. 232 of 1892) against the defendant to recover the share due to him for the years 1889—1892 and that that suit was referred to arbitration; and that by the award made he was held entitled to his share; that the award was duly filed in Court and a decree (No. 232 of 1892) passed in accordance therewith.

He now sued for his share for the years 1891—1893.

* Second Appeal, No. 575 of 1894.

(1) I. L. R., 7 Cal., 727.