

## APPELLATE CIVIL.

Before Mr. Justice Parsons, Chief Justice (Acting), and Mr. Justice Ranade.

1898.  
September 26.

RAMCHANDRA DHONDO AND ANOTHEE (ORIGINAL PETITIONERS), APPLICANTS, v. RAKHMABAI AND OTHERS (ORIGINAL OPPONENTS), OPPONENTS.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 310A—Act V of 1894—Execution sale—“Person whose immoveable property has been sold”—Prior private purchaser of property sold in execution not within the section.*

A person who has purchased property which is afterwards sold in execution of a decree obtained against his vendor, is not entitled under section 310A of the Civil Procedure Code (Act XIV of 1882) to have the execution sale set aside.

APPLICATION under the extraordinary jurisdiction of the High Court, section 622 of the Civil Procedure Code (Act XIV of 1882).

The applicants applied to the Subordinate Judge of Chikodi to have a sale in execution set aside under section 310A of the Civil Procedure Code.

The property in question was sold on 1st April, 1898, in execution of a money decree against Rakhmabai and was purchased by opponent No. 2. The applicants, however, alleged that Rakhmabai had previously sold this property to them under a duly registered deed of sale dated 11th August, 1890, and they accordingly applied to have the execution sale set aside under section 310A, Civil Procedure Code (Act XIV of 1882).

That section provides as follows:—

“Any person whose immoveable property has been sold under this chapter may at any time within thirty days from the date of sale apply to have the sale set aside on his depositing in Court, &c., &c.”

The Subordinate Judge rejected the application, holding that the section did not apply. The applicants thereupon obtained a rule from the High Court to set aside the order of the Subordinate Judge.

*Mahadev V. Bhat* for the applicants in support of the rule:—He relied on *Vithu v. Damodar*<sup>(1)</sup>.

*Gokuldas K. Parakh*, for the opponents, showed cause:—The applicants do not belong to the class of persons referred to in

\* Application, No. 128 of 1898 under the extraordinary jurisdiction.

(1) P. J. for 1895, p. 200.

the section, and they cannot apply under it. Similar words are used in section 311, and the cases upon that section apply to this case—*Bisheshar Kuar v. Hari Singh*<sup>(1)</sup>; *Asmutunnissa v. Ashruff Ali*<sup>(2)</sup>; *Ramchandra v. Gokul*<sup>(3)</sup>; *Timmanu v. Mahabala*<sup>(4)</sup>.

1898.

RAMCHANDRA  
v.  
RAKHMABAI.

PARSONS, C. J. (ACTING):—The words “person whose immoveable property has been sold” used in section 311 of the Code of Civil Procedure had received a judicial meaning long before section 310A was added to the Code. (See *Asmutunnissa Begum v. Ashruff Ali*<sup>(5)</sup>; *Bisheshar Kuar v. Hari Singh*; *Timmanu v. Mahabala*<sup>(7)</sup>; and *Ramchandra v. Gokul*<sup>(8)</sup>.) By employing the same words in section 310A the Legislature may be presumed to have intended them to bear the same meaning. It is argued that the words are of wide and general import and mean any person whose property has been sold. They may mean this, but then it has to be seen whose property has been sold *under this Chapter*, for these last three words must have a meaning also. It is only the judgment-debtor’s right, title and interest in any property or the right, title and interest therein of any other person bound by the decree that can be sold under Chapter XIX in execution of a decree. In the present case there was a money decree passed against Rakhmabai in execution of, which the property was attached as hers, and her right, title and interest therein was sold on the 1st April, 1898, and purchased by the opponent. It is the applicant’s case that he bought it on the 11th August, 1890, that is, long before the suit was filed against Rakhmabai. It is thus clear that, even assuming the property as his, it has not been sold as his, and that he does not come within the meaning of the words “person whose immoveable property has been sold under this Chapter.” In the case of *Vithu v. Damodar*<sup>(9)</sup>, the applicant was rightly held to be the owner of the property, since he was bound by the decree, and the sale had disposed of his right of redeeming the property. We, therefore, discharge the rule with costs.

(1) (1882) 5 All., 42.

(5) (1888) 15 Cal., 488.

(2) (1888) 15 Cal., 488.

(6) (1882) 5 All., 42.

(3) P. J., 1891, p. 309.

(7) (1895) 19 Mad., 167.

(4) (1895) 19 Mad., 167.

(8) P. J. for 1891, p. 309.

(9) P. J. for 1895, p. 200.

1898.

RAMCHANDRA  
v.  
RAKHMABAI.

RANADE, J. :—The decision of this application turns upon the construction of section 310A introduced into the Code of Civil Procedure by the amending Act V of 1891. There have been only two decisions of this Court on that section. In one of them, *Vilhu v. Damodar*<sup>1)</sup>, it was held that the words “any person whose immoveable property has been sold” included other persons than the judgment-debtor, and that the applicant in that case (who was purchaser from one of two brothers, both of whom had mortgaged the property to a creditor who sold the property in execution of his decree obtained against the brothers and applicant, who was made a co-defendant) was a person who was entitled to apply under section 310A. In the other case, a co-sharer in the property sold was held not to be entitled to apply under section 311—*Ramchandra v. Gokul*<sup>2)</sup>. In two Madras cases in which the new section was considered, the applicant was the judgment-debtor himself—*Rangasami v. Virasami*<sup>3)</sup>; *Muthu Ayyar v. Ramasami*<sup>4)</sup>. The Calcutta High Court has considered this section, as also a similar section of the Bengal Tenancy Act (section 174) in many cases, but the point considered had reference chiefly to the question whether the section conferred a new right, or effected a change of procedure only, and, therefore, was or was not retrospective in character—*Jogolanund Singh v. Amrita Lal Sircar*<sup>5)</sup>; *Girish Chundra v. Apurba Krishna*<sup>6)</sup>; *Lal Mohun Mukerjee v. Jogenbra Chunder Roy*<sup>7)</sup>; and *Uzir Ali v. Ram Komal*<sup>8)</sup>.

The effect of the corresponding words used in section 311 was considered in *Abdul Huq v. Mohini Mohun*<sup>9)</sup>, and it was held that the words “any person whose immoveable property has been sold” include a person who alleges that he is the owner of the property, even though he is neither the judgment-debtor, judgment-creditor, or auction-purchaser. The correctness of this decision was questioned in *Asnulunnissa Begum v. Ashraff Ali*<sup>10)</sup>, and it was held by the Full Bench in that case that a

(1) P. J. for 1895, p. 200.

(2) P. J. for 1891, p. 309.

(3) (1895) 18 Mad., 477.

(4) (1896) 20 Mad., 158.

(5) (1895) 22 Cal., 767.

(6) (1894) 21 Cal., 940.

(7) (1887) 14 Cal., 636.

(8) (1888) 15 Cal., 383.

(9) (1886) 14 Cal., 240.

(10) (1888) 15 Cal., 488.

1893.

RAMCHANDRA

RAXHMABAI.

person who claims to be a purchaser of the judgment-debtor's rights at a prior execution-sale was not a person who could apply under section 311 of the Code. A person claiming by a title paramount to the judgment-debtor is not a person within the terms of the section, as his rights are not affected by the sale. The Madras High Court followed this ruling in *Subbarayadu v. Pedda Subbarazu*<sup>(1)</sup>. In a previous decision of the Calcutta High Court on section 311 of the Code, *In the matter of the petition of Bhagabuti Churn Bhattacharjee*<sup>(2)</sup>, it was held that though the words used in section 311 were not confined to the judgment-debtor, they did not include a person who had purchased at a prior execution-sale. A mortgagee decree-holder was held to be a person who could apply under section 311 of the Code to set aside the sale—*Rakhal Chunder Bose v. Dwarka Nath Misser*<sup>(3)</sup>. These decisions were all considered by a Full Bench of the Calcutta High Court in *Abdul Gani v. Dunne*<sup>(4)</sup>, followed by the Madras High Court in *Timmanna v. Mahabala*<sup>(5)</sup>. In the Calcutta case, Petheram, C. J., held that section 311 did not exclude a person whose interest would pass by the sale. Mr. Justice Ghose stated that the test to be applied was whether the applicant would have been entitled to bring a suit to contest the sale, or to recover the property.

These decisions on section 311 must govern the interpretation to be put on the similarly worded section 310A. In the absence of any ruling of this Court to the contrary, we must accept these decisions of the High Courts of Madras and Bengal, and hold that the applicant in the present case, who is a prior private purchaser from the judgment-debtor, is not a person who comes within the purview of section 310A. As his interests were not affected by the execution sale, his application was very properly rejected by the lower Court. We must discharge the rule.

*Rule discharged.*

(1) (1892) 16 Mad., 476.

(3) (1886) 13 Cal., 346.

(2) (1832) 8 Cal., 367.

(4) (1892) 20 Cal., 418.

(5) (1895) 19 Mad., 167.