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that it is a power which must be exercised, not capriciously, but only in good faith on necessary occasions and for necessary and legal purposes. Judging from the past there is no reason to suppose that there will be any abuse of it in the future. As regards the right to the offerings, the lower Court is undoubtedly correct. Whatever is placed upon or given to the idol belongs to the idol, that is, to the temple. The *gors* have the right to keep only what is given to them as remuneration for their own personal services wherever the gift is made.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

GANPATRA'M MOTIRA'M, (AUCTION-PURCHASER), APPLICANT v.

ISAAC ADAMJI, (JUDGMENT-DEBTOR), OPPONENT.*

Civil Procedure Code (Act XIV of 1882), Sec. 320—Act VII of 1888, Sec. 30—Rules framed by the Local Government under Section 320 of Act XIV of 1882 as amended by Section 30 of Act VII of 1888—Not retrospective—Execution of decree—Sale—Confirmation of sale—Collector's power to confirm or set aside a sale—Collector.

The rules(1) framed by the Local Government in 1890 in exercise of the powers conferred by Section 320 of the Code of Civil Procedure, as amended by section 30 of Act VII of 1888 are not retrospective in their operation so as to give the Collector the power to confirm a sale held before the date of issue of the rules. Nor do the rules authorize the Collector to set aside a sale.

On 27th July, 1889, the property in dispute was sold by the Collector in execution of a decree which was referred to him under section 320 of the Code of Civil Procedure (Act XIV of 1882).

On 23rd September, 1889, the Collector set aside the sale, on the ground that the auction-purchaser had purchased the property for and on behalf of the decree-holder. Thereupon the auction-purchaser applied to the Court which had passed.

* Application No. 102 of 1890 under Extraordinary Jurisdiction.

(1) See *Bombay Government Gazette*, Part I, pp. 38, 39.

Rule 16, Clause II, confers on the Collector and such of his gazetted subordinates to whom a decree has or may hereafter be referred under Rule 4, the following power:—

"The power referred to in paragraph 1 of section 312, Civil Procedure Code, to pass an order confirming a sale, if no application to set the sale aside has been made within the time limited by law, or if every application so made has been disallowed."

Rule 17 provides: "If any application to set aside a sale within the time limited by law to the Collector or other officer aforesaid, he shall refer the applicant to the Civil Court."

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the decree, complaining of the Collector's proceeding, and praying for a confirmation of the sale. The Court asked the Collector to return the record of the case, but this he refused to do, on the ground that he had extended the time given by the decree to the judgment-debtor to redeem.

In January, 1890, the local Government framed new rules in exercise of the powers conferred by section 320 of the Code of Civil Procedure as amended by section 30 of Act VII of 1888. One of these rules empowered the Collector to confirm a sale held in execution of a decree transferred to him.

In April, 1890, the auction-purchaser again applied to the Court for a confirmation of the sale. This application was rejected, on the ground that under the new rules framed by Government the Collector alone had the power to confirm the sale.

Held, that the rules in question had no application to the present case, the sale having been held before the rules were promulgated. The Civil Court was, therefore, competent to confirm the sale.

Held, further, that even if the rules did apply, they did not empower the Collector to set aside the sale, or extend the time given by the decree to the judgment-debtor to redeem.

THIS was an application under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The property in dispute was mortgaged by Isaac A'damji to Nathubhái Jivandás.

Nathubhái obtained a decree upon his mortgage and applied for execution of the decree by attachment and sale of the property mortgaged.

The Subordinate Judge transferred the execution of the decree to the Collector.

On 27th June, 1889, the property was put up to auction, and one Ganpatráam Motiráam purchased it.

On 23rd September, 1889, the Collector, acting on the Mámlat-dár's report that Ganpatráam had purchased for and on behalf of the decree-holder, set aside the sale and enlarged the time granted by the decree to the judgment-debtor to redeem.

On 3rd October, 1889, the auction-purchaser applied to the Subordinate Judge, complaining of the illegality of the Collector's order, and praying that the sale be confirmed.

The Subordinate Judge asked the Collector to return the papers of the case, but this he refused to do.

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On the 16th October, 1889, the auction-purchaser again applied to the Subordinate Judge for a confirmation of the sale. The Subordinate Judge again asked the Collector to return the record, when he replied that he had extended the time for redemption till May 1890, and that, therefore, the papers could not be returned.

In January, 1890, the Local Government framed certain rules in exercise of the powers conferred by section 320 of the Code of Civil Procedure as amended by section 30 of Act VII of 1888. Rule No. 16, clause (2), conferred on the Collector "the power referred to in paragraph 1 of section 312, Civil Procedure Code, to pass an order confirming a sale, if no application to set the sale aside has been made within the time limited by law, or if every application so made has been disallowed" (1).

On the 10th April, 1890, the auction-purchaser again applied to the Subordinate Judge for an order confirming the sale.

But this application was rejected, on the ground that under the new rules framed by Government, the Collector alone had the power to confirm the sale.

Against this order the auction-purchaser applied to the High Court under its revisional jurisdiction.

A rule *nisi* was granted, calling upon the judgment-debtor to show cause why the sale should not be confirmed.

Chimanlál Harilál for the applicant:—The new rules framed by Government under section 320 of the Code of Civil Procedure are not retrospective. They cannot govern sales held before their promulgation. Even if they did, these rules do not empower the Collector to set aside a sale, or to alter the terms of a decree. Before these rules came into force it was the duty of the Subordinate Judge to confirm the sale. The Collector to whom a decree is transferred for execution, acts as a ministerial officer, subject to the control of the Civil Court. The Subordinate Judge had, therefore, jurisdiction in the present case to set aside the Collector's proceedings and confirm the sale—*Mahadaji V.*

(1) *Bom. Govt. Gazette*, Part I, p. 39, for 1890.

Karandikar v. Hari D. Chikne⁽¹⁾; *Lallu Trikam v. Bhávla Mithia*⁽²⁾.

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Gokaldás Kahándás Párek (for the opponent):—The new rules govern the present case, and the Subordinate Judge has no power to interfere in the matter. As regards the Collector's proceedings, assuming that they are illegal, they cannot now be set aside. The auction-purchaser's petition to this Court complaining of their illegality, is barred by limitation.

BIRDWOOD, J.:—The Rules Nos. 16 and 17, published with Government Notification No. 92 of the 8th January, 1890, at pages 38 and 39 of the *Bombay Government Gazette* for 1890, cannot have retrospective effect, so as to give the Collector the power to confirm a sale held before the date of issue of the rules. In the present case, the Subordinate Judge alone had power to confirm the sale held by the Collector on the 27th July, 1889. Even if the rules were applicable, the Collector is not given by them the power of setting aside a sale. The Collector acted quite illegally in setting aside the sale on the 23rd September, 1890. He also had no power, under the Code, to extend the time given by the decree of the Civil Court to the judgment-debtor to redeem. When an application was made to the Court by the purchaser to confirm the sale, the Court asked the Collector to return the papers; but this the Collector refused to do. When a second reference was made to him, he replied that he had extended the time for redemption and could not, therefore, send the record. On the 10th April, 1890, the Subordinate Judge refused an application for confirming the sale, on the ground that the papers were with the Collector, and he was helpless. The judgment-debtor was finally allowed by the Collector to redeem the property in June, 1890. The Collector received the money from the judgment-debtor and then asked the Subordinate Judge for instructions as to its disposal. The Subordinate Judge replied that he could give no instruction as to the disposal of the money which had been illegally recovered.

It is clear that the Collector had no authority to take the mortgage money from the judgment-debtor in June, 1890. Fol-

(1) I. L. R., 7 Bom., 332.

(2) I. L. R., 11 Bom., 478.

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lowing the decision in *Lallu Trikam v. Bhávla Mithia*⁽¹⁾, we reverse the order of the Subordinate Judge, dated the 10th April, 1890, and direct the Subordinate Judge to dispose of the application on which that order was passed and the two preceding applications, made with the same object, according to law. The opponent to pay the costs of this application. Costs incurred hitherto in the lower Court to be costs in the execution proceedings.

Rule made absolute.

(1) I. L. R., 11 Bom., 478.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

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JA'VERBÁI, (PLAINTIFF), v. KABLIBA'I, (DEFENDANT).*

August 29, 30,

Will—Construction—Succession Act X of 1865, Secs. 98, 100, 102—Gift to a class some of whom not in existence—Rule in Tagore Case—Void gift—Subsequent gift valid, although prior gift void—Contingent gift—Succession Act X of 1865, Sec. 103—Power of appointment given by will, effect of—General power of appointment.

Manchárám Pitámbardás by his will dated 14th April, 1873, after appointing his brother Jamnádás to be his executor and directing the payment of legacies, bequeathed all his estate, moveable and immoveable, not otherwise disposed of, to Jamnádás, his executors, administrators and assigns, upon trust to collect outstandings and to pay debts and legacies and to stand possessed of the residue in trust (1) for his (the testator's) wife Jáverbái and Ambávalu, the wife of his brother Jamnádás during the life of both, or the survivor of them, for their or her sole use; (2) and from and after decease of the survivor of them in trust for the male issue of Jamnádás, if any there be; (3) and, in default of such male issue, in trust for any person or persons, in any shares or share, and in such manner as his brother Jamnádás should by any deed or deeds or writing or writings appoint with or without power of revocation or new appointment.

Jamnádás proved the will, and as executor managed the estate until his death on the 17th October, 1888. He had no male issue, but he had two daughters, who were the defendants in his suit. Shortly before his death, viz. on the 7th October, 1888, he made a will (as stated therein) in accordance with the authority given to him by the last clause of the will of Manchárám. He directed that twelve months after the death of Jáverbái (Manchárám's widow) the estate should be divided equally between his two daughters, Kabli and Moti.

* Suit No. 235 of 1890.