

was not adverse to that of the minor. Such a case as this is clearly contemplated by the second paragraph of section 443 of the Code of Civil Procedure. That being so, the decision of the Lower Appellate Court was clearly based upon an erroneous ground. The view we take that an appeal was not the proper mode of having a *sulemama* such as has been entered into in this case set aside, is in accordance with that taken by this Court in the case of *Biraj Mohini Dasi v. Chinta Moni Dasi* (1).

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The decree of the Lower Appellate Court must therefore be reversed, and it would be left open to the respondent, if he wishes [617] to have the compromise set aside, to proceed either by review or by a separate suit. The appellant is entitled to her costs in this Court as well as in the Lower Appellate Court.

Appeal allowed.

30 C. 617.

APPELLATE CIVIL.

GANGA PROSAD v. RAJ COOMAR SINGH.* [23rd. February, 1903].

Appeal—Order—Civil Procedure Code (XIV of 1882), ss. 244, 287 (e)—Value specified in Sale Proclamation.

An order passed by a Court disallowing the objection of a judgment-debtor, that the value of the property specified in the sale proclamation under s. 287, cl. (e) of the Code of Civil Procedure, was grossly inadequate, comes under s. 244 of the Code, and is therefore appealable.

[Diss. 27 M. 259, F. B.=14 M. L. J. 57. Fol. 23 I. C. 780. Ref. 2. Pat. L. J. 13; 6 M. L. T. 252; 3 I. C. 342; 10 I. C. 371=14. C. L. J. 35=16 C. W. N. 124; Dist. 5 Pat. L. J. 270=1920 Pat 227=56 I. C. 452.]

SECOND APPEAL by the judgment-debtor, Ganga Prosad.

A property belonging to the judgment-debtor was ordered to be sold by public auction in execution of a decree. After the Munsif had caused a proclamation of the intended sale to be made under s. 287 of the Civil Procedure Code, the judgment-debtor put in a petition of objection stating that the value of the property specified in the sale proclamation was grossly inadequate. The Court disallowed the objection on the ground that if the property were sold at an inadequate price, the judgment-debtor might then apply to set aside the sale. The execution case was struck off, the attachment standing over.

On appeal by the judgment-debtor, the Subordinate Judge held that, although the Munsif had discretion to take evidence for the purpose of ascertaining the value of the property advertised for sale and ought to have exercised that discretion, as the [618] order of the Munsif was passed under s. 287 of the Civil Procedure Code, no appeal lay to him from that order. The appeal was accordingly dismissed.

Babu Raghu Nandan Prosad for the appellant.

No one appeared for the respondent.

GHOSE AND PRATT, JJ. The application which the judgment-debtor made to the Munsif, upon which his order of the 14th April, 1902 was made, related to a matter contemplated by section 287, clause (e), Code

* Appeal from order No. 290 of 1902, against the order of Tej Chunder Mookerjee, Subordinate Judge of Chapra, dated July 25, 1902, affirming the order of Umesh Chunder Sen, Munsif, Chapra, dated April 14, 1902.

(1) (1901) 5 C. W. N. 877.

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of Civil Procedure, namely, the value of the property to be specified in the sale proclamation, the judgment-debtor asserting that the amount as mentioned in that paper was grossly inadequate. The Munsif did not go into any evidence on this matter upon the ground that, in his view, the sale might be hereafter set aside if the property be sold at an inadequate price, the result being that the sale proclamation, as it was originally issued, was maintained.

Against this order of the Munsif, the judgment-debtor appealed to the higher Court; and the Subordinate Judge has dismissed the appeal upon the simple ground that no appeal lay against the order of the Munsif.

We think that in this respect the Court below was in error, because the order made by the Munsif was an order between the parties as falling under section 244, Civil Procedure Code; and, if so, it is obvious that an appeal did lie to the higher Court. We accordingly set aside the order of the Subordinate Judge, and send back the record to him for retrial of the appeal preferred to him. The costs will abide the result.

Appeal allowed: case remanded.

30 C. 619 (=7 C. W. N. 433.)

[619] APPELLATE CIVIL.

MATANGINI DEBI v. GIRISH CHUNDER CHONGDAR.*

[6th March, 1903.]

Sale in execution of Certificate—Public Demands Recovery Act (Bengal Act I of 1895) ss. 15, 19, 32, 33—“Final,” meaning of—Appeal—Review—Revision—Power of revision by Commissioner.

A suit to set aside a sale in execution of a certificate under the Public Demands Recovery Act is maintainable in the Civil Court.

Ram Taruck Hazra v. Dilwar Ali (1) referred to.

An order made by a Certificate Officer under section 19 of Bengal Act I of 1895, is final only in the sense that it shall not be open to appeal as provided by s. 32 of that Act, but not in the sense that it shall not be open to review or revision by the Commissioner under s. 33 of the same Act.

Nasruddin Khan v. Indronarayan Chowdhury (2), *Badarichary v. Ram Chandra Gopal Savant* (3), and *Ramsing v. Babu Kisansing* (4), relied upon [Appr. 2 C. L. J. 306; Expl. 34 C. 677=11 C. W. N. 803=6 C. L. J. 34.]

SECOND APPEAL by the plaintiffs, Matangini Debi and others.

An *ajma* mehal bearing towji No. 1274 in the Burdwan Collectorate was sold for arrears of cess under s. 21 of Bengal Act I of 1895 on the 31st January 1896. Thereupon the plaintiff No. 3 applied to set aside the sale on making the necessary deposit under s. 19 of that Act. He alleged that under the terms of a permanent lease which the plaintiffs held of the shares of the defendants Nos. 2 to 6 in the property sold as well as of other properties belonging to the said defendants, they (the plaintiffs) were liable to pay damages in case of default in payment of revenue and cesses on account of the towji that might fall due by them, and that, in the circumstances, he was competent under s. 19 of Bengal Act I of 1895 to [620] make the necessary deposit and to have the sale

* Appeal from Appellate Decree No. 556 of 1900, against the decree of B. L. Gupta, District Judge of Burdwan, dated Dec. 22, 1899, reversing the decree of Hara Kumar Dass, Munsif of Burdwan, dated Aug. 31, 1898.

(1) (1901) I. L. R. 29 Cal. 78.

(3) (1898) I. L. R. 19 Bom. 113.

(2) (1866) B. L. R. Sup. Vol. 367;

(4) (1893) I. L. R. 19 Bom. 116.

5 W. R. 93.