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making an arrangement to get rid of the rice for a perfectly legitimate purpose at the earliest possible opportunity. As the case stands, there is no evidence that this rice was ever intended for human consumption. There is evidence and evidence which appears to us to be satisfactory that it was intended for the consumption of pigs.

There is a further difficulty which stands in the way of the Magistrate's order, and that is that his judgment contains no finding that the rice was brought for the purpose of sale, or that it was intended for human food. Before he could have made the order that he has made, he would have been obliged to find these facts affirmatively. He does not find them, and he does not, as far as can be ascertained from the judgment, disbelieve the case set up on behalf of the petitioner. His finding is that there is always a risk, that is to say, the rice may be sold for human consumption to poorer classes, or may be used in a flour mill worked by unscrupulous persons. The fact that this danger exists does not justify the order which has been made. If any attempt is made to sell this rice for consumption by the poorer classes, then it would be the duty of the Corporation to step in and stop such a sale. But until some such attempt is made the Corporation, in our opinion, is not justified in destroying the property of a man who is disposing of that property in a way which is perfectly legitimate.

The result, therefore, is that we make the rule absolute, setting aside the order of the Municipal Magistrate dated the 3rd March last.

Rule made absolute.

30 C. 425.

[425] CIVIL RULE.

ABDUL RAHAMAN v. MATIYAR RAHAMAN.* [5th December, 1902.]

Deposit in Court—Civil Procedure Code (Act XIV of 1882) s. 310A—Sale in execution of decree—Co-sharer, deposit by

A person claiming under the Mahomedan law a share in some immoveable property which has been sold in execution of a decree against his co-sharers, cannot come in and make a deposit under s. 310A of the Civil Procedure Code.

Ramchandra v. Rahmabat (1), Paresh Nath Singha v. Nabogopal Chattopadhyaya (2) referred to. Srinivasa Ayyangar v. Ayyathorai Pillai (3) distinguished.

[Ref. 13 M. L. T. 123=24 M. L. J. 205=1913 M. W. N. 101=18 I. C. 579.]

RULE granted to Abdul Rahaman, the auction-purchaser.

This Rule arose out of an application by one Matiyar Rahaman for setting aside a sale under s. 310A of the Civil Procedure Code. It appeared, that one Abdul Ali obtained a decree for money against one Wahid Ali and Mobarakjan Bibi, and in execution of that decree held certain immoveable property belonging to them. This property originally belonged to one Aman Ali, who sold the said property to his wife, Guran Bibi, by a kabala, dated 21st Sraban 1252. In 1259 both Aman Ali and Guran Bibi died. Guran Bibi left two sons, Wahed Ali and Waridulla, a daughter, Mobarakjan, and a mother, Nisa Bibi. Nisa Bibi, who inherited a share of the daughter's property, died leaving the applicant and his brothers and a sister as her heirs. The

* Civil Rule No. 2856 of 1902.

(1) (1098) I. L. R. 23 Bom. 450.
(2) (1901) I. L. R. 29 Cal. 1.

(3) (1897) I. L. R. 21 Mad. 416.

application was objected to by the auction-purchaser, that the applicant had no *locus standi* under s. 310A of the Civil Procedure Code, and that the kabala dated the 21st Sraban 1252, set up by the applicant, was a forgery. The lower Court having found that the kabala was a *bona fide* transaction, and also having found that Nisa Bibi, as mother of Garan, inherited the property as an heir with the judgment-debtor and Wari-dulla, held that the applicant was a fractional [426] owner of the property sold, and that he had an interest in it. The application was allowed and the sale was set aside.

Babu *Dhirendra Lal Khastgir*, for the auction-purchaser, contended that the opposite party had no *locus standi* to make the application under s. 310A. The right, title and interest of the judgment-debtor only in the property was sold, and the title of the opposite party was not affected thereby at all; see the case of *Ram Chandra v. Rakhmabai* (1).

Babu *Satis Chundra Ghose*, for the opposite party, contended that he (*Matiyar Rahaman*) being a co-sharer had sufficient interest in the property to come in under s. 310A of the Civil Procedure Code and to make the deposit. He is a "person whose immoveable property has been sold" within the meaning of the said section. In the case of *Paresb Nath Singha v. Nabogopal Chattopadhyaya* (2), Mr. Justice Amir Ali expressed his opinion that the words "any person whose immoveable property is sold" includes every person who has an interest in the property in question, whether qualified, partial or absolute. His Lordship was of opinion that a mortgagee, an owner of a reversion, has partial interest, and therefore they all come within the meaning and intent of the section. In the case of *Rakhal Chunder Bose v. Dwarka Nath Misser* (3), it has been held that a mortgagee has a *locus standi* to make an application under s. 311 of the Civil Procedure Code. In that section also the words are "any person whose immoveable property has been sold." In the case of *Srinivasa Ayyangar v. Ayyathorai Pillai* (4) it has been held that a mortgagee has a right to come in under s. 310A.

PRINSEP, J. A person, claiming under the Mahomedan law a share in some immoveable property which had been sold in execution of a decree against his co-sharers, applied under section 310A, Code of Civil Procedure to be allowed to make a deposit within the terms of that section, and, notwithstanding objection taken, he has been allowed to make such deposit and the sale has been accordingly set aside. A Rule has been obtained to consider this matter. It seems to me that the petitioner who [427] made the application under section 310A is not a person within the terms of that section, as he is not a person whose immoveable property has been sold under this chapter. It is quite possible that in describing the property as the property of the judgment-debtor, his share may have been included. But that would not affect his right or title or entitle him to come under section 310A on the ground that his immoveable property has been sold. The proceedings to which he was no party cannot possibly affect him. To use the words of Mr. Justice Ranade in the case of *Ramchandra v. Rakhmabai* (5), "as his interests were not affected by the execution sale, his application was very properly rejected by the lower Court." These are cases which have been considered by us, and which have been referred to by the lower Court as

(1) (1898) I. L. R. 23 Bom. 450.

(2) (1901) I. L. R. 29 Cal. 1, 13.

(3) (1886) I. L. R. 13 Cal. 346.

(4) (1897) I. L. R. 21 Mad. 416.

(5) (1898) I. L. R. 23 Bom. 450 (453).

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authority for holding that a mortgagee may come in under section 310A. Now, so far as this Court is concerned, the cases, I believe I may correctly state, have proceeded on the ground that the sales being under the Bengal Tenancy Act would convey to the purchaser a right to avoid these incumbrances; and, therefore, it has been held that the mortgagee has such an interest in the immoveable property, that he is entitled to come in under section 310A, or, I should say more correctly, within the corresponding section, which is exactly in the same terms, namely, section 174 of the Bengal Tenancy Act. The facts of the case of *Srinivasa Ayyangar v. Ayyathorai Pillai* (1) are not fully stated; but so far as the latter part of the judgment of the learned Judges is concerned, I am unable, after fullest consideration, to agree with it, for it seems to proceed on two cases decided by this High Court, in both of which the sales would confer a right to the purchaser to avoid the incumbrances, and on this ground it was held that the encumbrancer was entitled to come in within the terms of section 310A, or rather section 174 of the Bengal Tenancy Act. The Rule must, therefore, be made absolute, and the order of the Munsif set aside. The petitioner is entitled to his remedy under the ordinary law, and his possession, or his title, has in no way been affected by the proceedings of the sale in execution of the decree against his co-sharers.

[428] A further objection was taken at the latest stage of the case by the learned pleader who opposes the Rule, that we have no authority to proceed in this matter under section 622, Code of Civil Procedure. We think that this is specially a case in which such interference is allowed and is necessary within the terms of that section.

The petitioner will be entitled to two gold mohurs as costs of this Rule, which is made absolute.

STEPHEN, J. I concur entirely in the judgment of my learned brother, and I have only this to say that, on the cases which have been laid before us, and particularly on the case of *Paresh Nath Singha v. Nallogopal Chattopadhyaya* (2), it seems to me plain, that the only person or persons who may apply under section 310A, Code of Civil Procedure, are the judgment-debtor himself and certain persons claiming an interest in the property by a transfer from the judgment-debtor. In the present case, it is plain that the persons, whose right to apply it has been sought to establish, based their claim upon an interest which is no way derived from the judgment-debtor.

Rule made absolute.

30 C. 429.

[429] APPELLATE CIVIL.

RAM KAMAL SHAHA v. AHMAD ALI.*

[7th January and 24th February, 1903.]

Appeal—Civil Procedure Code (Act XIV of 1882) s. 544—Appeal on grounds common to all the defendants.

A brought a suit against B, C, D, and others, for recovery of possession of certain immoveable property on declaration of title thereto, alleging that he

* Appeal from Appellate Decree No. 1844 of 1899, against the decree of Babu Jogendra Nath Ray, Subordinate Judge of Chittagong, dated the 4th August 1899, reversing the decree of Babu Pankaja Kumar Chatterjee, Munsiff of Satkania, dated the 13th of March 1899.

(1) (1897) I. L. R. 21 Mad. 416.

(2) (1901) I. L. R. 29 Cal. 1.