

Railway Company (1), which was a case of short delivery of goods, the learned Judges held that the contract as embodied in the Risk Note was such as absolved the Railway Company from all liability to make good to the consignee any loss that might have been occasioned by reason of the short delivery of goods. The same principle was affirmed in the case of *Balaram Harichand v. The Southern Marhatta Railway Company* (2).

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DEC. 3, 4.
CIVIL RULE.
30 C. 267=7
C. W. N. 370.

In this view of the matter, we are clearly of opinion that the decree passed by the Judge of the Small Cause Court against the East Indian Railway Company is wrong in law, and ought to be set aside. The rule is accordingly made absolute with costs.

Rule made absolute.

30 C. 262 (=7.C. W. N. 341).

[262] ORIGINAL CIVIL.

ROSHUN LALL v. RAM LALL MULLICK.* [14th January, 1903.]

Chambers—Civil Procedure Code (Act XIV of 1882), ss 295, 310A—Sale in execution—Judgment-debtor, deposit by—Rateable distribution.

Section 295 of the Civil Procedure Code does not apply to a deposit made by a judgment-debtor under s. 310A of the Code.

The words "for payment to the decree-holder" in s. 310A mean that the decree-holder is the person solely entitled to the money paid into Court.

Hari Sundari Dasya v. Shashi Bala Dasya (3) and *Bihari Lal Paul v. Gopal Lal Seal* (4) followed.

[Fol. 37 Bom. 387; 40 Cal. 619; Ref. 23 M. L. J. 585=17 I. C. 920; 45 Bom. 1094=23 Bom. L. R. 455=62 I. C. 104.]

APPLICATION in Chambers on Registrar's summons by the plaintiff Roshun Lall.

On the 25th of March 1901, the plaintiff Roshun Lal obtained a decree against the defendants Ram Lall Mullick and others for the sum of Rs. 10,761-10-9 with costs, which amounted to Rs. 1,759-7.

He received from the defendants the said sum of Rs. 10,761-10-9 and a sum of Rs. 1,019-0-6 in part payment of the taxed costs, leaving a balance of Rs. 740-6-6. For the recovery of this amount the plaintiff had the defendants' one-sixth share of the premises No. 57, Sovaram Bysack's First Lane, in the town of Calcutta, attached and sold by the Sheriff of Calcutta. After the sale the defendants applied under s. 310A of the Civil Procedure Code to have the sale set aside on depositing in Court a sum equal to five per centum of the purchase-money and the amount specified in the proclamation of sale as required by the section. The defendants' application was granted. Prior to the realization in the manner aforesaid of this amount from the defendants, several applications for execution of decrees for money [263] against them had been made to this Court. The plaintiff served a Registrar's summons on all these judgment-creditors and applied before the Judge sitting in chambers for payment to him of the amount deposited by the defendants as aforesaid.

* Original Civil Suit No. 789 of 1900.

(1) (1892) I. L. R. 17 Bom. 417.

(3) (1896) 1 C. W. N. 195.

(2) (1894) I. L. R. 19 Bom. 159.

(4) (1897) 1 C. W. N. 695.

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Some of the judgment-creditors contended that, under the provisions of s. 295 of the Civil Procedure Code, they were entitled to a rateable distribution of the assets realized.

Mr. *Sinha* for the plaintiff. The money was deposited under s. 310A of the Civil Procedure Code for payment to my client, the decree-holder, and to him only. It was a voluntary payment and not assets realized by sale or otherwise in execution of decree. I rely upon *Hari Sundari Dasya v. Shashi Bala Dasya* (1) and *Bihari Lall Paul v. Gopal Lal Seal* (2).

Mr. *Knight* for Golam Nabi, one of the judgment-creditors. The monies in Court are assets realized in execution of a decree, and all the judgment-creditors, who have applied for execution of their decrees, are entitled to a rateable distribution.

Mr. *Kinney* and Mr. *G. C. Dey*, Attorneys on behalf of two other creditors, supported Mr. *Knight's* contention.

SALE, J. I think I must hold that the language of section 310A of the Code is too precise to enable me to give effect to the arguments based upon the apparent conflict between sections 295 and 310A as to rights of judgment-creditors, who have applied for rateable distribution, and I think I must adopt the construction which has been placed upon section 310A by the cases of *Hari Sundari Dasya v. Shashi Bala Dasya* (1) and of *Bihari Lall Paul v. Gopal Lal Seal* (2). The hardship of such a construction is not so great upon other creditors as it might seem at first sight, because the attachment of the property by these creditors would, on the sale being set aside, still hold good and there would seem to be nothing to prevent any of the judgment-creditors, who have attached, from proceeding to bring the property to a fresh sale under his attachment. I think the [264] words "for payment to the decree-holder" must mean that he is the person solely entitled to the money, which has been paid into Court. The applicant may have his costs of the application and add them to his claim, and as regards the other creditors, who have appeared, they may also add their costs to their respective claims. I certify for Counsel.

Attorney for the plaintiff: *S. K. Deb.*

Attorneys for the judgment-creditors: *Golam Nabi, K. N. Mitter.*

30 C. 265 (=7 C. W. N. 229).

[265] APPELLATE CIVIL.

MOHENDRA NATH MOOKERJEE *v.* KALI PROSHAD JOHURI.*

[10th, 16th, 17th, 18th and 19th December, 1902.]

Benamidar—Suit—Revocation—Registration—Agent—Document—Lease—Contract Act (IX of 1872) s. 208—Specific Relief Act (I of 1877) s. 23, cl. (b)—Specific performance of contract.

A *benamidar*, as such, is not entitled to maintain a suit for recovery of possession of immoveable property, of which he is a mere *benamidar*.

Hari Gobind Adhikari v. Akhoy Kumar Mozumdar (3) affirmed.

Bhola Pershad v. Ram Lal (4) and *Ravji Appaji Kulkarni v. Mahadev Bapuji Kulkarni* (5) distinguished.

* Appeal from Original Decree No. 375 of 1899 against the decree of Karuna Das Bose, Subordinate Judge of 24-Parganas, dated August 30th, 1899.

(1) (1896) 1 C. W. N. 195.

(4) (1896) I. L. R. 24 Cal. 34.

(2) (1897) 1 C. W. N. 695.

(5) (1897) I. L. R. 22 Bom. 672.

(3) (1889) I. L. R. 16 Cal. 364.