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32 C. 1093=2
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689.

without the assistance of the Court, or that there has been any denial of justice in this case. No grounds have been made out to justify the exercise of our extraordinary jurisdiction under the Charter Act, and the Rule will, therefore, stand discharged.

Rule discharged.

32 C. 1104 (=10 C. W. N. 193=3 C. L. J. 27.)

[1104] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Bodilly.

MANIK LAL SEAL v. BANAMALI MUKERJEE.*

[2nd August, 1905.]

Sale in execution of decree—Setting aside sale—Invalid sales—Want of jurisdiction—Effect on validity of sale—Civil Procedure Code (Act XIV of 1882), s. 273.

Where a court executing its own decree on receiving from another Court an order attaching the decree returned the notice of attachment to the latter Court on the ground that it did not state the amount for which the attachment had been issued and proceeded with the execution and sold certain properties:

Held that the Court on receiving the order was bound to comply therewith, and under s. 273 of the Civil Procedure Code it was debarred from proceeding with the execution, unless the bar was removed in one of the ways specified in the section and that the sale was invalid.

SECOND APPEAL by the decree-holder Manik Lal Seal.

The appellant obtained a decree for rent against the respondent Banamali Mukerjee in the Court of the Subordinate Judge of Midnapore. Proceedings were instituted in that Court for the execution of the decree, and some properties belonging to the judgment-debtor were advertised for sale, the 23rd October 1903 being fixed for the sale. On the petition of the judgment-debtor the sale was adjourned to the 19th November. On the 14th of November the decree for rent was attached by the Munsif of Ghatal and notice of the attachment was received by the Subordinate Judge on the same day. The Subordinate Judge, however, by an order, dated the 18th November, returned the notice to the Munsif on the ground that it did not state the amount for which the attachment had been issued, and proceeded with the execution of the rent decree; some of the properties advertised for sale were sold on the 19th November and were purchased by a third [1105] party, one Kumud Kanta Mukerjee. The judgment-debtor applied under sections 244 and 311 of the Civil Procedure Code to have the sale set aside on the ground *inter alia* that the sale was invalid by reason of the attachment of the decree by the Munsif of Ghatal. The Subordinate Judge dismissed the application. On appeal the District Judge reversed the order and set aside the sale on the ground that it was void by reason of the attachment issued by the Munsif.

The decree-holder appealed to the High Court.

Babu Sorashi Charan Mitra for the appellant.

Babu Biraj Mohn Muzumdar for the respondent.

PRATT AND BODILLY JJ. In this case the judgment-debtor applied to have an execution sale set aside upon two grounds, *first*, under section 311 of the Code of Civil Procedure for irregularities and consequent injury,

* Appeal from Appellate Order No. 70 of 1905, against the order of F. Roe, District Judge of Midnapore, dated the 21st of July 1904, reversing the order of Nanda Lal Dey, Subordinate Judge of Midnapore, dated the 23rd of March 1904.

and, *secondly*, under section 244 that the Court had no jurisdiction to sell the property.

The Subordinate Judge found against the petitioner upon both grounds.

In appeal the District Judge dealt only with the question of the validity of the sale, and holding that the Court was debarred by the provisions of section 273 from selling the property in execution directed that the sale should be set aside.

Against this order the decree-holder appeals to this Court.

The facts are as follows :—The Court in which the present execution case was pending received an order from another Court under section 273 of the Code for attaching the decree. The Court instead of giving effect to the attachment order returned it with an intimation that it did not contain information as to the amount of the decree under which the attachment order was issued. The Court then proceeded to sell the property, and we have to consider whether the sale was invalid.

The words of the section, so far as they are relevant to this case, are :—

“ If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court, which passed the decree sought to be [1106] executed requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly unless and until :—

- (a) the Court which passed the decree sought to be executed cancels the notice, or
- (b) the holder of the decree sought to be executed applies to the Court receiving such notice, to execute its own decree.”

It is clear that the Court on receiving the order for attaching the decree was bound to comply therewith. The requisition for further information as to the amount under execution was not such as was required by law, and could not avail to give the Court authority to proceed with the sale in contravention of the clear terms of the law.

It has been urged before us by the learned vakil for the appellant that the procedure adopted by the Court was a mere irregularity, and that the sale ought not therefore to be set aside except upon proof that the judgment-debtor had sustained substantial injury in consequence of such irregularity, and he has referred us to certain sections of the Code, such as for example section 290 under which the Court is required to carry out certain preliminaries before proceeding to sell the property. It has been held that non-compliance with those preliminaries does not necessarily render the sale invalid, but would constitute an irregularity within the meaning of section 311. We are unable to accept the proposition that section 273 of the Civil Procedure Code can be safely interpreted by the analogy of other sections of the same Code. Under section 290, the Court is charged with the duty of carrying out the sale, and is required to observe certain preliminaries as to fixing the date of sale. Under section 273, the attachment of the decree has the effect of staying further execution and of debarring the Court from selling the property unless and until that bar has been removed in either of the ways specified in the section. The Court could not proceed with the sale; it had no jurisdiction to do so, and the course adopted, necessarily, we think renders the sale invalid.

We therefore affirm the order of the Lower Court, and dismiss this appeal with costs.

Appeal dismissed.