

Before Mr. Justice E. Jackson and Mr. Justice Mitter.

MAHARAJA DHIRAJ MAHTAB CHUN BAHADUR (DEFENDANT) *v.*
SHAGOR KUNDJ (PLAINTIFF).*

1870

August 18

Jurisdiction—Special Appeal—Interference by the High Court in a Case cognizable by the Small Cause Court—Act XXIII of 1861, s. 13.

In a suit cognizable by the Small Cause Court, and in which no special appeal lies to the High Court under Section 13, Act XXIII of 1861, the High Court exercised their extraordinary power and dismissed the suit.

The plaintiff, at a sale held in execution of a decree passed in favor of the defendant, purchased the right, title, and interest of the judgment-debtor of and in, a certain parcel of land. At the suit of a third party, it was declared that the judgment-debtor had no right in the property sold. The plaintiff brought the present suit against the defendant for recovery of rupees 63-2 being the amount paid by him into Court for the purchase of the property sold in auction, and taken out therefrom by the defendant in satisfaction of his decree.

The defence set up was that the plaintiff was not entitled to a refund of the purchase-money as he should have used due diligence before his purchase in ascertaining the right which was to be sold.

The Moonsiff passed a decree in favor of the plaintiff.

On appeal, the Subordinate Judge confirmed the decree of the lower Court.

The defendant appealed to the High Court.

Baboo *Rashbehari Ghose* for the appellant.

The judgment of the Court was delivered by

JACKSON, J.—We think the judgment of the lower Appellate Court ought not to be allowed to stand.

In this case, the plaintiff had, in execution of decree, purchased the rights and interests of his judgment-debtor in a certain jote. Subsequently, in the course of proceedings in the Civil Court, it was determined that the said judgment-debtor had no rights and interests whatever in that jote, and the plaintiff, as purchaser, accordingly, obtained nothing by his purchase. He has now brought this suit to recover from the decree-holder the price which he paid at the auction sale.

Both Courts have decreed the claim. They seem to rest their decision upon the case of *Greesh Chunder Pottar v. Sookhoda Moyee Dabee* (1), but this

* Special Appeal, No. 211 of 1870, from a decree of the Subordinate Judge of East Burdwan, dated the 30th November 1869, affirming a decree of the Moonsiff of that district, dated the 18th July 1869.

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decision, in the first place, is by no means analogous to the case, and in the next place, the decision itself was set aside by the Full Bench decision in *Sowdani Choudhrai v. Krishna Kishor Poddar* (1), and it is quite clear that the purchaser at such an auction sale is at liberty to purchase or not as he chooses, that the maxim of *caveat emptor* most thoroughly applies, and that he has no claim as against any person for his own act in purchasing certain property as the rights and interests of a judgment-debtor, even if it should afterwards turn out that that property did not belong to the said judgment-debtor.

We have no doubt whatever that, upon the law of the case, the decision of the Judge ought to be set aside, and the special appeal to this Court allowed.

Some contest has been raised before us as to whether a special appeal lies in this case; but whether it is so or not, we think this is a case of that sort that we ought to set aside the decision under our extraordinary powers, even if we could not interfere in special appeal.

We set aside the decision of the Judge, and dismiss the plaintiff's suit with costs.

(1) 4 B. L. R., F. B., 11.

