Before Mr. Justice Bayley and Mr. Justice Hobhouse.

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IN THE MATTER OF THE PETITION OF MAHARAJA DHIRAJ MAHTAB CHAND BAHADUR, OF BURDWAN.*

Superintendence—24 and 25 Vict. c. 104, s. 15—High Court—Jurisdiction.

A claim was disallowed to certain property which had been attached in execution of a decree. The property was sold: and after satisfaction of the decree, it was ordered that the surplus-proceeds should be rateably distributed among other judgment-creditors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameen made another order, setting aside the previous order for distribution, so far as it affected some of the creditors. *Held*, that the Principal Sudder Ameen had no jurisdiction to make the latter order. The High Court would, therefore, interfere to set it aside under its general power of superintendence.

Baboo *Chandra Madhab Ghose*, on behalf of the Maharaja of Burdwan, moved to make absolute a rule *nisi* granted on the Maharaja's petition, which stated as follows:—

"That your petitioner obtained decrees against the above debtors (Baikantnath Mullick and Amritalal Mullick) on 1st July 1845. That in execution of decrees Nos. 160 and 161, in favor of Anandmayi and Hiralal Seal and others respectively, the interest of the above judgment-debtors in Lots Sherpore and Basantpore was attached; and although objection was offered to the sale thereof, upon the ground of the properties being *dewattra*, the opposition was overruled on 22nd April 1867, and the sale took place on 12th July 1867.

"In the meantime, but subsequent to the aforesaid attachment, certain other decree-holders attached the same properties in execution of their decrees.

"That subsequent to the sale, your petitioner and Hiralal and others and Hafizooddin (in Nos. 68 and 138), as also certain other decree-holders, attached the surplus sale proceeds in execution of their respective decrees

"That the Principal Sudder Ameen of Hooghly, on the 17th August 1867 last, ordered that Anandmayi and Hiralal and

* Motion Case No. 725 of 1868, against the order of the Principal Sudder Ameen of Hooghly, dated the 30th November 1867.

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others, decree-holders in Nos. 160 and 161, being the parties who first attached the properties, should be in the first place fully satisfied out of the sale proceeds.

"That subsequently on 20th November last, the Principal Sudder Ameen directed that the other decree-holders, who had also attached the properties sold, should be satisfied out of the remaining surplus sale proceeds to the full extent of their respective decrees, and that the money left after such satisfaction, should be rateably distributed amongst your petitioner and other decree-holders, including Hiralal Seal and others and Hafizooddin.

"That on the 30th November last, the Principal Sudder Ameen, by a proceeding held, made a rateable division, in accordance with his order of 20th November.

"That subsequently the objectors aforesaid objected to the said money being applied to the payment of the decrees of your petitioner and others, upon the ground that the properties sold being *dewattra*, the sale proceeds could not be applied towards the satisfaction of personal debts.

"That the Principal Sudder Ameen, on the 13th March 1868, raised anew the same question that had been finally decided on 22nd April 1867; and holding the land to be *dewattra*, ordered the money to be applied to the satisfaction of the decrees of Hiralal Seal and Hafizooddin above named in (Nos. 68 and 138,) those decrees being for contribution of Government revenue, and therefore being not in his opinion for personal debts."

The rule was issued against Hiralal Seal and others to shew cause why the order of the Principal Sudder Ameen, dated 13th March 1868, should not be set aside, and the order of the 30th November 1867 should not be restored.

In moving to make the rule absolute, Baboo *Chandra Madhab Ghose* contended that the order of the Principal Sudder Ameen of the 13th March was clearly without jurisdiction, and also illegal on the face of it. The order that had been made by him on the 20th November, was a legal and proper order under section 271 of the Procedure Code; that order could not be revoked or set aside at the instance of a third party. The only sections in Act VIII. of 1859, under which a third party was

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allowed to intervene during execution, were sections 246 and 230, neither of which applied to this case; after sale a third party could be heard.

Mr. *Allan* (with him Baboo *Ashutosh Dhur*), on behalf of Hiralal Seal, contended that the sale proceeds of Lot Sherpore represented the property itself. The third party had, therefore, every right to intervene under section 246, and to claim the money as co-trustees of the religious endowment. The High Court had nothing, whatever, to do with the legality or illegality of the order complained of. There was no appeal to this Court against an order under section 271, and this was not of a class of cases in which the Court, under section 15 of the Charter Act, is authorized to interfere.

Baboos *Nalit Chandra Sen* and *Rashbehari Ghose* for Debendranath Mullick and others.

Baboo *Jagadanand Mookerjee* in reply.—When once a sale takes place, there is no section under which a third party can intervene, and there is no option left to the Court, but to make an order under section 271 during the proceeds of sale beetwen the several decree-holders. The Principal Sudder Ameen has, therefore, acted wholly without jurisdiction.

BAYLEY, J.—This is an application to set aside an order of the Principal Sudder Ameen of Hooghly, by which the Maharaja of Burdwan, as a decree-holder, was prohibited from sharing in certain sale proceeds in Court in execution of a decree.

The first ground for the application is that the Principal Sudder Ameen acted without jurisdiction, in ordering, on the application of a third party, that certain sale proceeds which he had already directed to be rateably distributed among certain decree-holders, should be withheld from one of those decree-holders, *viz*,. the Maharaja of Burdwan; and that in this view, the order of the Principal Sudder Ameen, being without jurisdiction, should be set aside.

The second ground is that the proceedings of the principal Sudder Ameen are opposed to the provisions of sections 270 and

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271, Act VIII. of 1859, and that, therefore, they ought to be set aside as illegal.

I am of opinion that the first ground, *viz*., that the principal Sudder Ameen acted wthout jurisdiction is correct, and that, therefore, it is not necessary to go into the second point at all as a matter for judicial decision.

The Principal Sudder Ameen specified the decree-holders as being of three classes: the first class consisted of decree-holders of decrees Nos. 160 and 161, Anandmayi and another; the second class of other decree-holders who had attached the same property; and the third class consisted of the Maharaja of Burdwan and Hiralal Seal and another.

On the attachment of the property (lot Sherpore and another) by the decree-holders of the first class, *viz*. Anandmayi and others, certain parties, Debendra Nath and Rajendra Nath, came in as claimants, urging that the lands were *dewattra* and as such, could not be sold in execution of the decree. The objection was overruled on the ground that the Petition was too late; and on the 12th July 1867, the sale of the property took place.

Subsequently, on the 17th August 1867, the Principal Sudder Ameen ordered that the decree-holders of the first class being parties who first attached the property, should be first satisfied out of the sale proceeds.

On the 20th November 1867, the Principal Sudder Ameen again directed that the second class of decree-holders who had also attached the properties, should be also satisfied out of the remaining surplus sale proceeds; and, accordingly on the 30th November 1867, an order was passed for a rateable distribution of the surplus-proceeds among the several decree-holders.

Thereupon Dabendra Nath and Rajendra Nath again repeated their claim to the land, on the ground that they were co-trustees of the land as *dewattra* (endowed land), and the Principal Sudder Ameen held that, the decree of Hiralal Seal being one for recovery by contribution on account of payments of Government revenue for others, he was entitled to share rateably in the sale proceeds, but the Principal Sudder Ameen held that, as the Maharaja of Burdwan had only an ordinary money-decree, he could not be allowed to share in the same.

I think that the Principal Sudder Ameen had no jurisdiction to make this order; because, although a third party may claim before sale, both moveable and immoveable property, under section 246, Act VIII. of 1859, still section 230 prohibits such party from claiming immoveable property after sale in execution. I had some doubts as to whether, with reference to the frequent rulings by this Court that the sale-proceeds represent landed property sold in another shape, the claim might not be considered as against land, but I think it is clear that the land is changed into money by the process of sale; and that for the purpose of execution, the proceeds are to be treated as moveable property or money in its ordinary shape.

I also think that the Principal Sudder Ameen acted without jurisdiction, having once passed an order on the 20th November that the surplus proceeds be rateably distributed among the several decree-holders remaining to be satisfied, *viz.*, Hiralal Seal and the Maharaja of Burdwan, and then having set aside and acted contrary to that order, on the mere motion of the third party, without first admitting a review of that previous order.

I am of opinion that, excepting in some special case of obvious and gross illegality, we cannot be called upon to exercise the extraordinary powers given us by section 15 of the Charter Act, as if they were ordinary powers of appeal; but as this question does not directly arise now that the case is decided on the point of jurisdiction, I need not go further into that question.

For the reasons stated above, I think that the order of the Principal Sudder Ameen should be set aside as passed without jurisdiction, and that the rule ought to be made absolute with costs.

HOBHOUSE, J.—The only facts which seem to me material in this case are these, *viz.* that on the 12th July 1867, certain properties of a certain judgment-debtor were sold, and that, thereafter, the surplus-proceeds of such sale were held in Court to be distributed among certain judgment-creditors. Certain of those creditors were satisfied in full; and by an order of the 20th November 1867, the Principal Sudder Ameen directed that the balance which remained should be distributed among the remain-

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ing creditors; and on the 30th November, made an order for a rateable distribution of the proceeds among those creditors, one of them being the Raja of Burdwan, the petitioner before us, and the other Hiralal Seal and others, who have been called upon to shew cause against the rule.

Having passed the order of the 30th November 1867, which, I may remark, was an order strictly within the provisions of section 271 of the Civil Procedure Code, the Principal Sudder Ameen, on the 13th March 1868, entertained and admitted the objections of certain persons not parties to the original suit, who set up a claim to the surplus-proceeds in question, on the ground that they were the proceeds of a *dewattra* mehal, of which they were co-trustees; and in its order the Court refused to allow the petitioner, the Maharaja, to participate in the surplus-proceeds, which, in its previous order, the Court had directed to be distributed to the said Raja rateably.

The petitioner before us now prays that this order of the 13th March 1868 be set aside, as having been passed without jurisdiction. He also says that the order is manifestly illegal on the face of it; and that on this ground also, we should, under the provisions of section 15 of the Charter Act, set aside the order.

I agree with Mr. Justice Bayley that the order was without jurisdiction, and it is not necessary, and I do not therefore go into the second point as regards the illegality of the order.

It seems to me that, in execution of a decree, the only parties that are before the Court, and over whom the Court has jurisdiction, are primarily the judgment-creditor and the judgment-debtor; and that if any third party wishes to intervene and to have any rights of his decided in reference to the property disposed of as between the judgment-creditor and the judgment-debtor, he can only come in under certain specific provisions of law. One of these provisions is to be found in section 246, and another in section 230, of the Code of Civil Procedure; but it is not, and it cannot be for a moment contended that the third party in this instance was a party who claimed to be heard under either of those provisions, for the one applies strictly to property under attachment and before sale, and the other to immoveable property only.

It seems to me then that, when a claimant can only be allowed to come in under certain provisions of the law, a person who appears, on behalf of that claimant, must shew that he has a right to be heard; and in this case he has not been able to do so. The order of the Principal Sudder Ameen of the 30th November 1867, was strictly a legal order, and could only be disputed, if it could be disputed at all in review. When, therefore, the Principal Sudder Ameen virtually set aside the order on the claim of a third person who had no legal standing before him, he usurped a jurisdiction which the law does not give him.

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I think therefore that this rule ought to be made absolute with costs.

Before Mr. Justice Loch and Mr. Justice Mitter.

TARIF BISWAS AND ANOTHER (JUDGMENT-DEBTORS) *v.* KALIDAS BANERJEE AND OTHERS (DECREE-HOLDERS.)*

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Kistbandi—Execution of Decree.

Where a judgment-debtor executed a kistbandi or instalment bond providing for the satisfaction of the decree which had been obtained against him, and subsequently failed to pay according to the terms of the kistbandi, *held*, that the decree-holder could enforce his claim under the terms of kistbandi by proceedings in execution, and need not file a fresh suit.

see also 14 B L R. 289.

THIS was a suit to execute a decree upon the terms of the kistbandi hereunder given. The facts appear on the face of the document and the decision of the High Court:—

To the High in Dignity SARBA CHANDRA BANDOPADHYA.

I, Sankar Biswas, indite this judgment instalment bond, (kistbandi) in the year 1260. You have applied for the execution of a decree dated 5th November 1853 for the recovery of rupees 161-6, besides costs, against me in the Court of the Moonsiff of Hanskhali; now by way of compromise, I have settled to pay you 166 rupees 12 annas, inclusive of costs, upon the security (mal zamin) of Tarif and Jarif of Patika Bati.

* Miscellaneous Special Appeal No, 471 of 1868, from a decree of the Officiating Judge of Nuddea, dated the 2nd July 1868, affirming a decree of the Sudder Moonsiff of that district, dated the 8th August 1867.