

Appellate Jurisdiction. (a)

Civil Miscellaneous Special Appeal, No. 285 of 1869.

VARADHA REDDI.....*Petitioner.*

VENKATA SUBBA REDDI and 2 } *Counter-Petitioners.*
 others.

A defendant complained under Section 257 of the Civil Procedure Code of irregularity in conducting the sale of his lands taken in execution of a decree against him. The sale was confirmed by the Court of First Instance and the order was affirmed on appeal by the Civil Judge.

Held, that a Special Appeal to the High Court did not lie.

THIS was an appeal against the order of the Civil Court of Chingleput, dated 20th July 1869 passed on Miscellaneous Petition, No. 318 of 1869 confirming the order passed by the District Munsif of Chingleput on Petitions Nos. 496 and 497 of 1869. 1870.
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Parthasarathy Aiyengar, for the petitioner.

Sanjiva Row, for the 1st counter-petitioner.

The facts appear from the following

JUDGMENT:—In this case a defendant complained under Section 257, Civil Procedure Code of irregularity in conducting the sale of his lands taken in execution of a decree against him. The sale was confirmed by the Court of First Instance, and the defendant then appealed to the Civil Court which confirmed the order below. He now seeks to appeal specially, and the preliminary objection is taken that a special appeal does not lie. There are two full bench decisions by the High Court at Calcutta (Reported W. R. Special Vol. p. 83, and 9, W. R., Civil Rulings, 218) in both of which it was held that a special appeal does not lie. Sections 256 and 257 are concerned only with material irregularity in publishing or conducting the sale of immoveable property resulting in substantial injury. Section 257 permits objection to be taken to the sale on the above ground, and if the sale is set aside the order is made final and an appeal is disallowed. If the objection is overruled and the sale is confirmed an appeal is allowed. The Section then goes on:—“The order passed on the appeal shall be final” and

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the party is declared to be precluded from bringing a suit. In favour of a special appeal lying, the contention is that the only finality aimed at is that which precludes the bringing of a suit, and that the order on the appeal means the appeal made and carried to its full extent in the ordinary course. But this does not appear to us to be the right construction. Certainly the precluding a fresh suit is not the only finality provided by the section, for the order setting aside the sale is to be final and all appeal therefrom is precluded. Then the words are not "the order passed on appeal" which would afford ground for the argument, that appeal included a special as well as a regular appeal, but they are more limited; "the order passed on the appeal," indicating, we think, that a single appeal was all that was intended to be allowed. Again, it would have been unnecessary to express that the order on the appeal should be final if the intention had been to leave open the complete course of appeal. The terms of both sections show clearly a desire on the part of the Legislature to prevent frivolous or prolonged litigation on the ground of irregularity in procedure in publishing or conducting a sale. In one case there is to be no appeal, and in the other case there is to be a single appeal, and no subsequent suit is allowable on the same ground of objection to the sale. We concur therefore with the High Court at Calcutta that an order under Section 257 is an instance in which in the words of Section 372 it is "otherwise provided," and a special appeal is taken away. We must therefore dismiss this special appeal with costs.

Appeal dismissed.
