

An objection was taken on the part of the appellant before their Lordships that the notice was not properly before the High Court, and that the High Court was not warranted in assuming its existence. But it is necessary, in considering such an objection, taken at so late a stage, to look carefully at the proceedings in the Courts below ; and it is clear to their Lordships that throughout the whole course of the trial the fact of the notice having been given was admitted.

On these grounds their Lordships are clearly of opinion that the judgment of the High Court should be affirmed, and they will humbly advise Her Majesty accordingly.

In the appeal of *Kishore Bun Mohunt v. Prosonnoocomar Adhikari*, the question of *res judicata* does not arise at all ; but it is said that the decree was merely a declaratory one, which could not be executed under section 260 of the Civil Procedure Code. Their Lordships have no doubt that it is a decree which can be executed, and that the High Court were right in dismissing the appeal from the District Judge who had directed the execution to issue. Indeed, it has not been substantially argued that if the first appeal fails this appeal can succeed.

Their Lordships will therefore humbly advise Her Majesty to dismiss this appeal. *Appeal dismissed.*

Solicitors for the appellant : Messrs. T. L. Wilson & Co.

C. B.

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KISHORE
BUN MOHUNT
v.
DWARKA-
NATH
ADHIKARI.

APPELLATE CIVIL.

Before Mr. Justice Ameer Ali and Mr. Justice Rampini.

BHAGBUT LALL (DECREE-HOLDER, AUCTION-PURCHASER) v. NARKU ROY (JUDGMENT-DEBTOR).^a

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April 2.

Second appeal—Order setting aside sale under section 294, Civil Procedure Code, 1882—Purchase by decree-holder without permission to bid at sale in execution of his decree—Civil Procedure Code, 1882, sections 244, 588.

No second appeal lies from an order made by a District Judge, on appeal, setting aside a sale under section 294 of the Civil Procedure Code, notwithstanding that section 244 bars a separate suit in such a case ; that section (244), whilst it precludes a right of suit, does not enlarge the right of appeal, which is limited strictly by section 588.

^a Appeal from order No. 201 of 1893, against the order of J. Kelleher, Esq., District Judge of Sarun, dated 11th of April 1893, reversing the order of Babu Upendro Nath Bose, Munsif of Chupra, dated the 21st of January 1893.

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 BHAGBUT
 LALL
 v.
 NAR KU ROY.

IN this case Bhagbut Lall had obtained a decree against Narku Roy, in execution of which certain property of the judgment-debtor was sold and was purchased by the decree-holder for Rs. 40. An application was thereupon made by the judgment-debtor to have the sale set aside on the grounds that the decree-holder had not obtained permission to bid for and purchase the property; and that there had been irregularity in the conduct of the sale which had resulted in the property being sold for an inadequate price, and consequent substantial injury to the judgment-debtor.

The Munsif found that there had been no irregularity in the conduct of the sale, and that the price for which the property was sold was not inadequate. He held, moreover, that though there was nothing on the record to show that permission was given to the decree-holder to purchase, yet there was sufficient evidence to show that he had such permission. He therefore rejected the application. On appeal the Judge reversed the Munsif's decision on the ground that the finding as to inadequacy of price was founded on insufficient materials, and that the decree-holder had purchased the property without permission. The sale was therefore set aside.

The decree-holder appealed to the High Court.

Mr. C. Gregory and Babu Baykunt Nath Dass for the appellant. Babu Aubinash Chunder Banerjee and Babu Makhun Lall for the respondent.

The objection was taken that no appeal lay.

The judgment of the Court (AMBER ALI and RAMPINI, JJ.) was as follows:—

The question involved in this appeal is extremely simple, although a considerable time has been occupied in its argument. The decree-holder appears to have purchased the property belonging to his judgment-debtor in execution of his decree. The judgment-debtor applied to have the sale set aside on various grounds—amongst others on the ground that the decree-holder had purchased the property without obtaining the permission of the Court. The Munsif before whom this application was made rejected it. On appeal the District Judge has, on the ground that the purchase was made by the decree-holder without the permission of the Court, set aside the sale. So far as the question of permission is concerned, whether the permission was

obtained or not, the finding of the learned Judge is one of fact into which we cannot enter. The decree-holder has appealed to this Court, and an objection has been taken on behalf of the respondent that no second appeal lies from the order of the District Judge under section 294. Mr. Gregory who appears for the appellant has argued that the question between the parties falls under section 244, and therefore, independently of any provisions in the Code and irrespective of section 294, he has a right to a second appeal. Now, section 294 provides that no holder of a decree, in execution of which property is sold, shall, without the express permission of the Court, bid for or purchase the property, and clause 3 of that section provides that when a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale. Section 588, clause 16, gives an appeal from orders under section 294, and the last clause of section 588 provides that an order passed in appeal under this section shall be final. Therefore, unless the matter comes under any other provision of the Code, it is clear that there is only one appeal and no more. Section 244, referred to as justifying the second appeal, declares that all questions arising between the parties to a suit in execution should be dealt with by orders of the Court executing the decree and not by a separate suit, and the case of *Viraraghava v. Venkata* (1), to which Mr. Gregory has referred, shows that in a case when an order is made under section 294 the judgment-debtor cannot proceed by separate suit, because the matter falls under section 244; but that case does not show that section 244 enlarges the right of appeal, which is restricted by section 588. It is clear that section 588, clause 16, is restrictive in its character, and gives one appeal only to the parties aggrieved or dissatisfied with any order confirming, setting aside or refusing to set aside a sale of immoveable property. To suggest that because section 244 precludes a right of suit it enlarges the right of appeal is untenable and no authority is shown for it.

As at present advised we think that no second appeal lies from this order, and we therefore dismiss the appeal with costs.

J. V. W.

(1) I. L. 16 Mad., 287.

Appeal dismissed.

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BHAGDUT
LALL
v.
NARRU ROY.