

(1890) 04 CAL CK 0005
In the Calcutta High Court

Gopal Mondul and Others

APPELLANT

Vs

Mohendro Narain Chaturaj and Others

RESPONDENT

Date of Decision : 01-04-1890

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2
Limitation Act, 1963 — Article 166, 18

Citation : (1890) ILR (Cal) 769

Hon'ble Judges : W. Comer Petheram, C.J;Tottenham, J;Prinsep, J;Pigot, J;Ghose, J

Bench : Full Bench

Judgement

Pigot, J.—The cases of Brojo Gnpal Sarkar v. Basirunnissa Bibi ILR Cal 179, and Gobind Chundra Majumdar v. Uma Charan Sen ILR Cal. 679 are relied on by the Suhordinate Judge as inconsistent with the previous decision of this Court mentioned in the reference. They are, in effect, liable to the interpretation put upon them by the Subordinate Judge, although not professing to overrule it; and for that reason, although the case may be disposed of without deciding upon that inconsistency, it is proper to deal with the questions put to us.

2. Relying upon them, and upon previous decisions mentioned by him, the Subordinate Judge has set aside the sale, holding that the balance of authority is in favour of the suit being maintainable, though the execution-creditor may be the purchaser.

3. The question is of greab importance, and ought, I think, to be determined in this reference. As to the first question, my opinion is as follows: When circumstances affecting the validity of a sale have been brought about by the fraud of one of the parties to the suit, and give rise to a question between those parties such as, apart from fraud, would be within the provisions of Section 244, a suit will not lie to impeach the validity of the sale on the ground of such fraud. I treat the "first question referred" as including the words "to impeach the validity of the sale" in the 5th line of it, and limit the answer to this.

4. The words of Section 244 are express: "The following questions shall be determined by order of the Court executing a decree, and not by separate suit (namely)-

(a) Questions regarding the amount of any mesne profits as to which the decree has directed inquiry.

(b) Questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit between the date of its institution and the execution of decree, or the expiration of three years from the date of the decree.

" (c) Any other questions arising between the parties to the suit in which the decree was passed or their representatives, and relating to the execution, discharge, or satisfaction of the decree, or to the stay of. execution thereof.

" Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

" If a question arises as to who is the representative of a party for the purposes of this section, the Court may either stay execution of the decree until the question has been determined by a separate suit or itself determine the question by an order under this section.

5. No doubt the expression "relating to the execution," etc., is wide and somewhat vague, and has caused some difficulty in more cases than one; but once a case is held to come within those words, the law seems plain enough. The words of the Sub-section (c) are as clear as could well be used, and apply to all questions other than those concerning mesne profits and interest mentioned in (a) and (b) between the parties and of the kind therein described.

6. The object aimed at is equally clear: it is that the Court having the parties already before it, should decide all questions relating to execution, etc., arising between them, in place of allowing one or the other of them to put his adversary to the delay and cost of a separate suit in cases in which but for this sub-section it might be possible for him to do so. In order to effect this object completely without injustice to the parties, an order under this section has been included within the definition of decree in Section 2 of the Code, so as to allow an appeal.

7. It is, however, contended that although the words of the sub-section include all questions relating to the matters specified, still, where questions arise of the nature referred to, in which fraud is involved, these may or must still be the subject-matter of a regular suit; and it is contended that the cases decided in this Court support this conclusion.

8. I shall refer to several of the cases which have been cited.

9. In Nilmoni Bonik v. Puddo Lochun Chuckerbutty BLR Sup Vol 379 : 5 WR Act X 20 a sale in execution of the decree under Act X of 1859 of a Revenue Court

(which decree itself had been set aside) was set aside as fraudulently obtained. The purchaser (if that be material) was not a party to the original suit, but was a party to the fraud. No question arose in the case u/s 11 of Act XXIII of 1861, the section then corresponding to Section 244.

10. *Umbica Churn Chuckerbutty v. Dwaika Nath Ghose* 8 W.R. 506 is one of those cases in which the head notes mis-state the decisions. The case was decided when Act XXIII of 1861 was in force. The Court says: "The question to be tried does not arise between the parties to the suit in which the decree was passed, and relating to the execution of that decree;" and lower down, "Section 11 therefore cannot apply." This ease, therefore, assuredly does not decide that notwithstanding Section 11 of Act XXIII of 1861 a suit on the ground of fraud would lie though between the parties to the suit in which the decree was passed and relating to the execution of that decree.

11. *Nund Lall Doss v. Delawar Ali* 11 W.R. 244. In this case no question u/s 11 of XXIII of 1861 seems to have arisen. The co-sharer of the plaintiff, one Jamul;Ali, induced the decree-holder to make false returns and to commit other irregularities, by which Jamul was enabled to purchase the plaintiff's property below its value in the name of Delawar Ali (defendant No. 1). It is difficult to see how this case can be treated as an authority for the proposition contended for. It does not appear from the report whether the decree-holder was a party to the suit or not: even if he was, it is plain he was not the only, or the real and principal defendant, and the relief claimed was against persons not parties to the original suit.

12. *Ujolla Dasi v. Dhiraj Mahtab Chand* ILR Cal 215 was a suit to set aside a sale, for arrears of rent under Bengal Act VIII of 1869. The procedure under Act VIII of 1859, if any, applied, and Section 283 of that Act does not contain the provision introduced into Act XXIII of 1861 and now contained in Section 244. The case does not apply.

13. In *Guna Moni Dasi v. Pran Khkori Daai* 5 BLR 223 : 13 WR (FB) 69 the plaintiff compromised a decree which the defendant had against her, paying about Rs. 930 in respect of the decree. The compromise, however, was not certified, and the defendant sued out execution: thus the plaintiff was compelled to pay the amount of the decree. The plaintiff brought the suit to recover the money paid under the compromise. It was held that Section 11 of Act XXIII of 1861 did not apply to payments made out of Court not certified to the Court, and of which it could not take notice, and did not therefore apply in the case. This case was followed in the case of *Ishan Chunder Bundopadhya v. Indra Narain Gossami* ILR Cal. 788, where it was held that Section 244 did not, any more than 11 of Act XXIII of 1861, apply to a case where a payment of money in satisfaction, of a judgment-debtor's liability under the decree was made out of Court and was not certified. In that case the decree having been executed, and the judgment-debtor's property purchased by the decree-holder, the Court set aside the sale.

14. These are cases in which it was held that the questions which arose were not "questions relating to the execution of the decree" within the meaning of the section. They do not decide that questions which do come within the purview of the section may nevertheless be determined by separate suit if a question of fraud is involved.

15. In the case of *Gunga Pershad Sahn v. Gopal Singh* ILR Cal 136 an agreement to postpone an execution sale was come to by the parties and was tiled in Court, but in the wrong Court. The sale took place in consequence of this mistake; the judgment-debtor was absent; and the decree-holder took advantage of the sale so held and bought the property. It was held that a suit would lie to set aside the sale, as it is said in the report (more accurately, as stated in the order, for a re-conveyance), upon payment of the amount due under the decree. In fact the sale was not invalidated, but was affirmed by the order, for a re-conveyance was ordered on terms to be fulfilled by the plaintiff". On reference to the paper-book it appears that those terms were contained in an agreement between the parties made after the sale, and that one of these terms was the payment by the plaintiff to the defendant and his father of money due under a former decree, which had no connection whatever with the sale, or with the suit in which the sale had taken place. No question was raised in the case as to Section 244: the questions in the case appear to have been treated as wholly unaffected by that section.

16. I think that it cannot be affirmed that either in this Court or elsewhere any course of decisions is to be found according to which questions coming under the sections may be determined by separate suit, because of being affected by considerations of fraud or if the circumstances giving rise to them have been brought about by the fraud of one of the parties to the suit in execution: and I see no reason why the section should not be held to apply to such cases as well as any others.

17. I must therefore dissent from the expression of opinion in the case of *Gobind Chandra Majumdar v. Uma Charan Sen* ILR Cal 679 at page , to the effect that: "If the sale was really a fraudulent sale, it is open to the judgment-debtor to bring a suit to set it aside on the ground of fraud." This, I think, would not be so if the question arising was one properly coming within Section 244.

18. The decision in the case just mentioned is so connected with the question with which we are here concerned, that I think myself bound to express my opinion upon it. In that case a sale in execution took place, of which the judgment-debtor was, by the fraud of the judgment-creditor and the purchaser, kept in ignorance until after the sale had been confirmed. It was contended that the judgment-debtor was entitled u/s 18 of the Limitation Act to apply to have the sale set aside within 30 days from the discovery of the fraud. But it was held that the sale having been confirmed, no application could be entertained u/s 311.

19. I think that u/s 18 of the Limitation Act, where irregularities affecting the

validity of the sale have been, by the fraud of the judgment-creditor or other parties to the sale, been kept concealed from the judgment-debtor, he is entitled, whether the sale has been confirmed or not, to make, as against the person guilty of the fraud or accessory thereto, such application, if any, u/s 311 as he may be entitled to make, his time for making it being computed from the time when the fraud first became known to him. The confirmation of the sale ought not to be used as a shield for the fraud by which the Court has been induced to make the sale itself.

20. In the present case the steps to take possession were a year after the confirmation of sale, and the judgment-debtor at once was put in motion.

21. I agree in principle with the cases decided in the High Courts of Madras and Bombay, and that of *Saroda Churn, Chuckerbutty v. Mahomed Isuf Meah* ILR Cal 376, referred to in the reference, and answer the second question in the affirmative.

22. In this particular case defendant No. 2, the purchaser, was not a party to the original suit: he has been held to have purchased benami for defendant No. 3. So also defendant No. 1, who was the decree-holder, has been held to have become purchaser of the decree for defendant No. 3, and to have carried out the decree under his orders.

23. I think that if we were to hold Sub-section (c) of Section 244 as governing cases in which the decree or the purchase was made benami, and to apply it on the footing that the persons really interested were, within the meaning of the sub-section, parties to the proceedings, we should run the risk of applying the section, so as perhaps in some cases to work hardship. I do not think we are bound to go further than the express words of the section, and therefore think that in the present case the suit may be held to lie. We already intimated this at the close of the argument. There is no doubt, of course, that the fraud found was of the grossest character; and the suit, not being barred by Section 244 as the questions in it did not arise between the parties to the former suit, in execution, will lie for relief against the fraud charged and proved.

24. The appeal will therefore be dismissed with costs.

W. Comer Petheram, C.J.

25. I agree with the judgment which has just been delivered.

Prinsep, J.

26. I am of the same opinion.

Tottenham, J.

27. I also agree with the judgment just delivered.

Ghose, J.

28. This case has been referred to a Full Bench in consequence of a conflict of opinion that exists upon the question whether, in the case of a fraudulent sale in execution of a decree where the decree-holder becomes the purchaser, a suit lies to set aside the sale. (The facts were then set out.)

29. It has been contended before us that defendant No. 3 being, upon the finding of the Court below, the real holder of the decree, and having purchased the property, though in the name of defendant No. 2, must be taken to be a party to the suit in which the decree was passed within the meaning of Section 244 of the Civil Procedure Code, and that the question now raised by the plaintiffs, the judgment-debtors, is a question relating to the execution of the decree, and therefore no separate suit lies to set aside the sale. It has been further contended that the omission of the publication of the sale notification, though it might have been fraudulent, was but an irregularity within the meaning of Section 311 of the Procedure Code, and that it was open to the plaintiffs to apply to the Court for the purpose of setting aside the sale within 30 days from the time when the fraud was discovered, claiming exemption u/s 18 of the Limitation Act.

30. Upon the first of these two contentions, it seems to me that neither the defendant No. 8, who is only beneficially interested in the decree and in the purchase at the auction-sale, nor the defendant No. 2, the ostensible auction-purchaser, can be properly regarded as a party to the suit in which the decree was passed, or the representative of any such party, within the meaning of Section 244 of the Code. The defendant No. 1, by virtue of the assignment of the decree, may no doubt be regarded as the representative of the original decree-holders, but it can hardly be said that the defendant No. 3 fills that character, much less the defendant No. 2; and they are the persons against whom the plaintiff seeks relief in this suit. It follows, therefore, that the case does not fall within Section 244; and upon the finding of fraud that has been arrived at by the Courts below, there can be no doubt that the plaintiffs are entitled to recover. And in this respect, I agree with my learned colleagues.

31. If this is a correct view, it may not be necessary to answer the two questions which have been referred to us. They are:

First.-" Whether, when circumstances affecting the validity of a sale have been brought about by the fraud of one of the parties to a suit, and give rise to a question between those parties, such as, apart from fraud, would lie within the provisions of Section 244, a suit will lie on the ground of fraud notwithstanding the provisions of that section? "

Second.-" Whether the case of *Saroda Churn Chuckerhutti v. Mahomed Isuf Meah* ILR Cal. 376 was rightly decided?

32. But perhaps it may be desirable, in view of the conflict of opinion that exists on the subject, and the importance of it, to answer these questions; and I proceed shortly to state my views.

33. The CPC prescribes that where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made, giving the time and place of sale (Section 287); and the proclamation shall be made in the manner prescribed by Section 274 on the spot where the property is attached, viz., on a conspicuous part of the property to be sold (Section 289).

34. After the notification of sale is thus published, the property is to be sold on the advertised day. The judgment-debtor may, however, apply u/s 311 to set aside the sale on the ground of material irregularity in publishing or conducting it; but if no such application is made, or if such application be made, and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser; and that no suit to set aside the sale on the ground of such irregularity shall be brought (s, 312). The Code further provides that the sale shall not become absolute until it has been confirmed by the Court (Section 314); and that when the sale has become absolute, the Court shall grant a certificate to the purchaser; and that upon such certificate being granted, the title to the property shall vest in the purchaser (Section 316).

35. In the present case, the sale was held on the 21st April 1885, and it was confirmed on the 26th May, no application having been made by the judgment-debtor to set aside the sale within the time prescribed by the Limitation Act, viz., 30 days.

36. The question then arises, -What is the remedy which the law allows to the judgment-debtor, and is this suit maintainable?

37. It was contended that it was open to the judgment-debtor to apply to the Court, which held the sale, for the purpose of setting it aside u/s 311 of the Code; and that he might have made such an application, by virtue of Section 18 of the Limitation Act, within 30 days from the date of the discovery of fraud. It will be observed that an application u/s 311 can only be made upon the ground of irregularity in publishing or conducting the sale, and a question does arise whether the non-publication of the notification of sale is but an irregularity within the meaning of that section. But supposing for the sake of argument that it is an irregularity, the question is whether it was really open to the judgment-debtor to make the application, the sale having been already confirmed, and the fraud being not discovered until after that confirmation.

38. I have already referred to the several sections of the Code which bear upon this matter, viz., Sections 311, 312, 314, and 316; and it will be observed that if no objection to the sale is made within the time allowed by Article 166 of the second schedule of the Limitation Act, i.e., 30 days from the date when the sale is held, the sale shall be confirmed and a certificate granted to the purchaser, in whom the title to the property shall thenceforth vest. It seems to me, regard being had to the arrangement of the various sections in the sub-chapter G (a)

and (b), that so soon as the sale is confirmed and a certificate granted, the execution Court, so far as that sale is concerned, becomes functus officio, and that it is not competent to re-open a matter which is concluded by the confirmation of the sale. And this is practically the view that was expressed in a case decided by the Chief Justice and myself, *Gobind Chandra Majumdar v. Uma Charan Sen* ILR Cal 679. And the same view, I find, was adopted by the Bombay High Court in the case of *Sakharam Gobind Kale v. Damodar Akharam Gujar* ILR 9 Bom 468.

39. Section 18 of the Limitation Act is as follows (omitting passages which are not necessary to be referred to in this connection): "When any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or the title on which it is founded, the time limited for instituting a suit or making an application against the person guilty of the fraud or accessory thereto shall be computed from the time when the fraud first became known to the person injuriously affected thereby."

40. This section contemplates the existence of a right to make an application. And the question here arises whether, after a sale has been confirmed, and the title to the property has vested in the purchaser, the right exists in the judgment-debtor to apply to the Court which held the sale to set it aside. If the view I have already expressed be correct, it would seem that no such right exists.

41. If the application be made before the sale is confirmed, the Court would be competent to entertain it, even if it is presented after the expiration of 30 days from the day of sale, if it is satisfied that the judgment-debtor was by means of fraud kept from the knowledge of what had taken place. But it seems to me that so soon as the sale is confirmed, and a certificate of sale given to the purchaser, the right to make such an application ceases to exist.

42. In the case of *Rai Bal Krishna v. Masuma Bibi* ILR All 142 : ILR 9 182 decided by the Judicial Committee, a question was raised whether the sale at which the plaintiff purchased was not bad by reason of non-compliance of the provisions of Section 219 of Act VIII of 1859 as to affixing of the notification of sale, and by reason of the period of 30 days having not expired from the notification before the sale was held. The High Court of the North-Western Provinces, apparently with reference to this question, and also with reference to a question of jurisdiction of the Court in which the sale took place, held that the plaintiff was not entitled to succeed as purchaser. But the Privy Council held otherwise. They observed; "With respect to the first case, their Lordships are of opinion that the judgment dismissing the suit on the ground that the plaintiff was not the purchaser of Bisheshur's mortgage, on the ground of the sale being irregular, and the Court not having jurisdiction to execute the decree, was wrong. The irregularities referred to, if they existed, were cured by the certificate of sale * * * "That was taken to be a case of an irregularity, and it was held that it was cured by the certificate of sale; and if this is the correct view of the law, I do not see how it can be said that after a sale has been confirmed, and a certificate

granted, it is open to the judgment-debtor to apply to the Court to set aside the sale upon the ground of irregularity.

43. I next turn to the question whether what occurred in this case was merely an irregularity, or something different from that. What is complained of is (and so it has been found by the Court below) that there was no notification of sale at all published. As I understand it, irregularity in publishing a sale refers to cases like these: the notification is required to be published on a conspicuous part of the property to be sold, but it is published in a hole or corner, or on some other property, or, where several properties are attached for sale, the notification is published on only one of them: the notification of sale does not contain some of the particulars mentioned in Section 287: the proclamation is to be fixed in the Court-house, but it is fixed in the Police Office. These are irregularities, and they would come u/s 311. But it seems to me that when there was no notification at all published, it is a different thing. It has been held in several cases, both in Calcutta and Allahabad, that where there is an infringement of the provisions of Section 290, which provide that no sale can take place before the expiration of 30 days from the publication of the notification in the Court-house, or if a sale takes place before the time specified in the notification of sale provided by Section 287, it is an illegality vitiating the sale. It is not a mere irregularity, but rather it is no sale at all under the Code. [See *Sadhusaran Singh v. Panchdeo Lal* ILR Cal 1 *Basharutulla v. Uma Churn Butt* ILR Cal 794 *Bakhshi Nand Kishore v. Malak Chand* ILR All. 289, *Jasoda v. Mathura Das* ILR All 511 *Ganga Prasad v. Jag Lal Rai* ILR All 333].

44. If these rulings be right, there can be no doubt that in this case the sale was no sale at all, and that the provisions of Section 311 as to irregularity in the publishing of the sale have no application. The case of *Rai Bal Krishna* ILR All 142 : ILR 9 182 decided by the Privy Council, which have already referred to, would, however, seem to be opposed to the view adopted in some of these cases. But however that may be, so far as the case before us is concerned, I am inclined to think that it was not simply an irregularity, but an illegality that occurred in the sale; for it is a condition precedent to a sale that a notification should have been previously published. No doubt instances have occurred where, in cases like this, the execution Court has interfered and set aside the sale when the matter was brought to its notice in proper time; but I should think that it is a power inherent in a Court holding a sale to refuse to confirm the sale if it finds that there has been no sale under the Code. [See in this connection the remarks of Sir John Edge in the case of *Ganga Prasad v. Jag Lal Bay* I.L.R All. 333, 337, 338.

45. Having dealt with the question whether an application could be made by the judgment-debtor to set aside the sale u/s 311, I proceed next to discuss the question whether he could have in this case taken proceedings u/s 244 of the Code, and whether that section is a bar to the present suit.

46. I have already said that Section 244 does not contemplate such parties as

those whom we have before us. But assuming that it does for the sake of argument, and for the purpose of enabling one to answer the question referred to us, the question that presents itself is whether an objection to the validity of the sale raised by the judgment-debtor after the sale has been confirmed u/s 312 can be dealt with by the Court u/s 244 as a question relating to the execution of the decree. I think not; for, as I have already explained, after a sale has been confirmed, everything in regard to that sale is at an end, and indeed the Court becomes functus officio. Section 316 distinctly lays down that, so far as the parties to the suit and the purchaser are concerned, the certificate of sale, which is to bear the date of the confirmation of sale, shall vest the title upon the purchaser. Can it be said that, notwithstanding the title has thus vested in the purchaser, proceedings may yet be taken u/s 244 of the Code upon any grounds mentioned in Section 311, or upon any other ground, such as fraud? I do not think so; for then there would be no finality in a proceeding holding or confirming a sale. Suppose the judgment-debtor was aware of the sale in proper time, and he applied to set it aside u/s 311, but the Court being of opinion that there was no irregularity confirmed the sale: the judgment-debtor subsequently discovers the fraud: can he then move the Court to set aside the sale u/s 244 and obtain relief on the ground of fraud? I apprehend not. Of course if the proceeding may be re-opened by an application u/s 311, although made after the confirmation of sale by reason of discovery of fraud, as to which I have already addressed myself, well and good; otherwise I do not see how, notwithstanding the confirmation of sale, an application may be made u/s 244, and how can the matter be dealt with by the Court as a "Court executing the decree."

47. The ground upon which the present suit has been brought is fraud; and it seems to me that this gives to the plaintiff a cause of action upon which he is entitled to come to Court. Fraud vitiates the most solemn proceeding of a Court of Justice); it is an act which is extrinsic to the case. And although the proceeding cannot be impeached on the ground of mistake, it may be shown (and this I should think by a separate or counter-action) that the Court was led to. make the decree or order by the fraud of one of the parties. Sir Barnes Peacock in the Full Bench case of Nilmoni Bonik v. Puddo Lochun Chuckerbutty BLR Sup. 379 : 5 W.R. Act X. 20, where the suit was brought to set aside a sale in execution of a decree under Act X of 1859, observed as follows: "There is no general power in one Civil Court to set aside a decree of another Court of competent jurisdiction upon the ground of an error or mistake on the part of the Court making the decree. But where a decree of one Court, or an execution of a decree, is obtained by fraud, the fraud gives a right of action to the party injured by it against the party guilty of the fraud. It is a cause of suit in a Civil Court which has jurisdiction to administer equity, justice and good conscience, and to restrain the parties to the fraud from reaping the benefit of their own fraud." And it has been held in other cases that, notwithstanding the provisions of Section 11, Act XXIII of 1861 (corresponding to Section 244), a suit may be brought if the sale was brought about by fraud. See Umbica Churn Chuckerbutty v.

Dwarkanath Ghose 8 W.R. 506, Nund Lall Doss v. Delawar Ali 11 W.R. 244, Mokort Nath Persad v. Gujadhur Persad 25 W.R. 156. The same principle may perhaps be deduced from two other cases-Pat Dasi v. Sarup ILR Cal 376 and Ujolla Dasi v. Dhiraj Mahtab Chand 7 C.L.R. 215. In the first-mentioned case, the sale took place notwithstanding satisfaction of the decree out of Court, and the decree-holder became the purchaser. It was held, that a suit lay to recover the property. In the other case, where also the decree-holder was the purchaser, the suit was brought to set aside the sale. It was held that unless the judgment-debtor objected, or had opportunity to object, to the sale u/s 257 of Act VIII of 1859 (corresponding to Section 311 of the present Code), a suit would lie to set it aside. Regard being then had to the reason of the thing, and to the course of decisions in this matter, I should hold that a suit lies, notwithstanding the provisions of Section 244 of the Code, to set aside the sale. I freely admit that if an application had been made in proper time by the judgment-debtor to the Court which held the sale, it might have set it aside upon the ground of fraud; but this is, as has been held in "Indian Law Reports," II, Madras, page 264, and "Indian Law Reports," VI, Bombay, page 148, because it is always competent to a Court to vacate any judgment or order, if obtained by fraud, and not because there is any special provision (as there is none) in the Code as to setting aside a sale for fraud. However that may be, there is nothing, I think, to prevent the judgment-debtor from bringing a separate suit for the same purpose: he might at any rate sue to have it declared that the sale passed no title to the purchaser, or that the purchaser is a trustee for him. In this particular case the judgment-debtor, no doubt, sues to set aside the sale, and not to have the declaration which I have just mentioned; but the objection on this head is merely as to the form and not to the substance; and, indeed, the plaintiff in the last clause of his prayer asks that any other relief which the Court may deem fit may also be granted; and upon this prayer the Court may declare that under the sale in question the defendant acquired no title, or that he should reconvey the property to the plaintiff. I observe that in the case of Gunga Pershad Sahu ILR Cal. 136, which was brought to set aside a sale held in violation of petition for postponement of the sale, which was agreed to by the decree-holder, and where the High Court of Calcutta passed a decree in favour of the plaintiff to the effect that upon his depositing certain moneys due to the defendant the latter should reconvey the property to him, the Judicial Committee substantially affirmed the decree. 786 They, however, understood the decree of the High Court as one setting aside the sale. Sir Barnes Peacock in delivering the judgment of the Committee thus expressed himself: "It appears to their Lordships in this case that the Judges of the Court below were right in ordering the sale to be set aside." That was also a case where the decree-holder was the purchaser, and I do not see why, if the decree that was given in that case was correct (and it must be taken to be correct), this, suit may not lie.