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**(1909) 07 BOM CK 0024**  
**In the Bombay High Court**

Harihar Kant Bhatta

APPELLANT

Vs

Rama Pandu Shetti

RESPONDENT

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**Date of Decision :** 16-07-1909

**Acts Referred:**

**Citation :** 4 Ind. Cas. 253

**Hon'ble Judges :** Heaton, J;Chandavarkar, J

**Bench :** Division Bench

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## Judgement

Chandavarkar, J.—Two points of law have been urged in support of this second appeal. The facts stated shortly are these: The property had been sold by the Court on the 17th January 1908 in execution of a decree against the respondent. On the 8th of February 1908 he applied to the Court to set aside the sale. That application was made upon the ground that the people of the village where he resided and where the property was situate, had so conspired as to bring about the sale for under-value. The application (Exhibit 16) was rejected. On the 15th February 1908 the respondent applied to the Court u/s 310- A and deposited the amount as required by that section. The appellant objected upon the ground that the application could not be entertained, because the judgment-debtor (respondent) having made an application u/s 311 was debarred by the provisions of Section 310-A from claiming any relief under the latter section.

2. The Subordinate Judge allowed the objection and rejected the respondent's application u/s 310-A. The District Court, on appeal by the respondent, has reversed the order of the Subordinate Judge. It was argued before the District Judge that no appeal lay against the order of the Subordinate Judge. The District Judge relying upon the decision of this Court in Pita Mati v. Chuniall Harakchand 31 B. 207; Bom. L.R. 15 held an appeal lay.

3. Before us it has been argued that the District Judge was Wrong in holding that an appeal lay to his Court against the Subordinate Judge's order u/s 310-A. We agree with the District Judge. The case is similar to that of Pita Mati v. Chunilal Harakchand 31 B. 207: Bom. L.R. 15.

4. Then it is argued that the judgment-debtor's application u/s 310-A could not be granted because he had applied to set aside the sale u/s 311. But was it an application under that section? It may be that when the respondent presented the application he presented it as one falling under that section but the question is not what he thought, or what section he had mentioned in his application, assuming that as a matter of fact he had mentioned Section 311 and none else. The substance of the grounds upon which he had made the application to set aside the sale must be looked to. If the allegations on the strength of which the respondent asked the Court to set aside the sale did not bring it within the grounds specified in Section 311, the mere mention of the section could not in law make it an application under it. So looked at, it fell not within the provisions of Section 311, but it must be regarded as an application u/s 244. The allegation was that the sale had been brought about by the fraud of the residents of the village where the lands were situate. It is admitted that the decree-holder and the judgment-debtor were residents of the same village so that the fraud was one imputed to them as it was to other villagers. If that is so, the application was not u/s 311 but in reality was one to set aside the sale for fraud u/s 244. That such an application could be made so as to attract to it the provisions of Section 244 was decided by the High Court of Calcutta in *Golam Ahad Chowdhry v. Judhister Chundra Shaha* 30 C; 142; 7 O. W.N. 305 with the principle of which we concur. Therefore, this ground argued before us must fail. We confirm decree with costs.

Heaton, J.

5. I agree with the order proposed. I wish to add a few words about one argument. It is contended that every application to set aside a sale must be an application u/s 311 of the Code; in other words whatever its nature and whatever the grounds on which it proceeds it must come under that section. The argument so stated, I think, refutes itself. But if further refutation is needed, it will be found in two specific cases which dealt with applications to set aside sales which were held not to be made u/s 311. These are *Golam Ahad Chowdhry v. Judhister Chundra Shaha* 30 C; 142; 7 O. W.N. 305 and *Parashram Hanmanta v. Balmukund Lachiram* 10 Bom. L.R. 752; 32 B. 572. I wish only to add that I consider that the District Judge has given ample reasons for the conclusion at which he has arrived and his decree should be confirmed.