

(1892) 05 PRI CK 0005

In the Privy Council

Prosunno Coomar Sanyal and Another

APPELLANT

Vs

Kasi Das Sanyal and others

RESPONDENT

Date of Decision : 14-05-1892

Acts Referred:

Citation : (1892) 19 ILRPC 683 : (1892) 19 IndApp 166

Hon'ble Judges : Hobhouse, Macnaghten, Hannen, Richard Couch, JJ.

Judgement

Macnaghten, J. 1. The suit in this case was brought for the purpose of setting aside the sale of a zemindari in the district of Pubna, called Futtehpore, which was sold in execution of a civil decree on the 10th of July, 1883. The Subordinate Judge dismissed the suit on preliminary grounds, without going into the merits. The High Court at Calcutta affirmed his decree. 2. It appears that some time before 1880, the Respondent Protap Chunder Banerji recovered against the Appellants, and certain persons who were co-sharers with them in Futtehpore, a decree for possession of some lands in dispute, and also a money decree for mesne profits and costs. In execution of that decree Futtehpore was attached. Thereupon, as the Appellants allege, they and two other persons who were co-Plaintiffs in the suit before the Subordinate Judge, paid their quota of the judgment debt and came to an arrangement with the judgment creditor that their shares should be exempted from sale. The shares of the other co-sharers were alone put up for sale, and they were sold on the 10th of February, 1882. Afterwards this sale was set aside, the attachment was revived, a fresh sale took place, and on the 10th of July, 1883, the whole of Futtehpore was sold. The allegation in the plaint is that the setting aside of the first sale, the revival of the attachment, and the second sale in which the shares of the Plaintiffs were sold with the rest, were brought about by fraud and collusion on the part of the other co-sharers, the judgment creditor, and the auction purchasers, who were all made Defendants. No particulars of the alleged fraud and collusion are given. The charge is general and perfectly vague. If it means anything, it can only mean that the judgment creditor broke his alleged agreement with the Plaintiffs, and that the other persons alleged to have been implicated, being aware of the

circumstances, took some part in the transaction. 3. Both Courts have held that the question which the plaint seeks to raise could only have been determined by the order of the Court which executed the decree, and that in such a case as the present a separate suit for the purpose of setting aside an execution sale is expressly forbidden by Section 244 of the Civil Procedure Code. 4. Mr Doyne, who appeared for the Appellants, admitted that the question at issue was one "relating to the execution, discharge, or satisfaction of the decree." But he argued with much ingenuity that the suit was not barred by the provisions of Section 244, because the question concerned the auction purchasers as much as anybody, and therefore, as he contended, it could not properly be described as a question "arising between the parties to the suit in which the decree was passed." At the same time, he admitted that he was unable to produce any authority for his contention, and he also admitted that it was the common practice to make the auction purchaser a party to an application for setting aside an execution sale. 5. As the point appeared to be one of some importance, and the Respondents were not represented at the Bar, their Lordships thought it desirable, before giving judgment, to examine the reported cases which have arisen under Section 244 of the Civil Procedure Code. An examination of those cases, of which it is only necessary to mention *Sakharam Govind Kale v. Damodar Akharam Gujar* (1), and *Kuriyali v. Mayan* (2), has satisfied their Lordships that the decision appealed from is in accordance with the construction which the Courts in India have uniformly placed on the section in question. 6. It is of the utmost importance that all objections to execution sales should be disposed of as cheaply and as speedily as possible. Their Lordships are glad to find that the Courts in India have not placed any narrow construction on the language of Section 244, and that when a question has arisen as to the execution, discharge, or satisfaction of a decree between the parties to the suit in which the decree was passed, the fact that the purchaser, who is no party to the suit is interested in the result has never been held a bar to the application of the section. 7. Their Lordships will therefore humbly advise Her Majesty that the appeal should be dismissed.