

1866.
December 5.
Civil Petition.

Bombay Codes, by which their cognisance of the suits, is expressly barred (a).

It appears to me, then, that, in cases like the present, the Civil and Revenue Courts have concurrent jurisdiction.

NEWTON and WARDEN, JJ., concurred.

Application rejected.

(a) "The Civil Courts shall take cognisance of all suits of a Civil nature, with the exception of suits of which their cognisance is barred by any Act of Parliament, or by any Regulation of the Codes of Bengal, Madras, and Bombay respectively, or by any Act of the Governor General of India in Council."

NOTE.—For other decisions relating to the jurisdiction of the Civil and the Revenue Courts in suits regarding rent, "right to possession of land," &c., see 2 Bom. H. C. Rep., 191—201.—ED.

Civil Petition.

R. V. KOSHTI *Applicant.*

NA'RA'YAN DHULA'PPA' *Respondent.*

Sale of immoveable property—objections for irregularity disallowed—illegal order by Judge on appeal set aside—Act VIII. of 1859, Secs. 256 and 257.

On application by the judgment debtor to the Principal Sadr Amín to set aside the sale by auction of a house, in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury: the objections were disallowed as untenable, and the sale confirmed. But the District Judge, on appeal, set aside the sale for a ground on which he had no authority to interfere.

On petition to the High Court by the purchaser of the house:—*Held* that the order of the Judge must be set aside as illegal; and the original order, confirming the sale, allowed to stand.

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THIS was an application to set aside, as illegal, an order passed on appeal by the District Judge of Ahmednagar, on the 28th of July 1866, by which the sale of a house was cancelled, after it had been confirmed by the Principal Sadr Amín.

The sale was held at Ahmednagar, on the 17th of January 1866, in execution of a decree against the respondent, Náráyan; and the petitioner was the purchaser.

On application by Nárāyaṇ to the Principal Ṣadr Amín to set aside the sale, on the ground of material irregularities, by reason of which he sustained substantial injury (Act VIII. of 1859, Secs. 256, 257), the objections were disallowed and the sale confirmed. The District Judge, on appeal, set aside the sale, on the ground that the officer conducting it ought to have received the amount of the judgment debt, which Nárāyaṇ offered to pay, after the petitioner had been declared the purchaser, but before the sale was confirmed.

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Vishvanáth N. Mandlik (Nov. 4) obtained a *Rule nisi*, calling upon the respondent to show cause why the order of the District Judge should not be set aside, as being illegal, and the order of the Principal Ṣadr Amín, confirming the sale, allowed to stand.

Dhīrajlál Mathurádás now (Dec. 3) appeared to show cause.—There is no appeal to this court, as the order passed on appeal by the Judge is final, under Sec. 257. [COUCH, C.J. :—The Judge did not set aside the sale on the ground of such an irregularity as is provided for by the Code, but for a totally different reason, for which there is no legal ground whatever.] Before the sale commenced, the defendant offered to pay the amount of the judgment. The plaintiff consented, and the defendant went to get the money; but before he returned the property was sold. The sale was hurried on, and the house was sold for a price much below its value. There was also an irregularity in publishing the sale, namely, that the house was described in the notification as containing 28 *khans* or compartments, whereas it contained 38 *khans*,—a misdescription by which the price must have been diminished.

Vishvanáth N. Mandlik was heard in reply.

COUCH, C.J. :—The order passed by the Judge in this case must be set aside as entirely unauthorised.

As to the alleged misdescription in publishing the sale, it cannot be considered a material irregularity, such as would affect the price at which the house was sold : as the sale was

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conducted on the spot, where the premises were open to inspection. Moreover the Judge does not rely upon that ground in setting aside the sale, although the objection was brought to his notice.

As to the objection which the Judge allowed, there is no law which would authorise the officer conducting a sale to stop it, because the defendant offered to pay the amount of the decree to the plaintiff. And the court, executing the decree, is bound to confirm the sale; unless the applicant, who seeks to set it aside, shall prove that he has sustained substantial injury by reason of some material irregularity in publishing or conducting the sale.

The order of the Principal Sadr Amin was, therefore right; and the order of the Judge reversing it is set aside, as being illegal, with costs on the respondent.

NEWTON and WARDEN, JJ., concurred.

Rule absolute.