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PARVATI  
v.  
KISANSING.

in the house, and that right, title, and interest was certainly at that time liable to be declared subject to a limited interest in favour of Parvati whose suit was then pending. He bought no more than Ramapa had or could give. As Ramapa's title was subject to the decree in Parvati's suit, Kisansing purchased subject to the same.

Then, as to the attachment of Kisansing being prior to the institution of Parvati's suit, we are of opinion that this makes no difference. The attachment would have been unaffected by new rights created by Ramapa subsequent to the attachment; but Parvati's right was no newly created one; it existed before the attachment, and was, therefore, unaffected by it.

The District Judge has remarked that "debts take precedence of maintenance". We may assume that this is correct. But we do not say that Kisansing had no right to sell the house in execution of Ramapa's debt, and to take possession of it when Parvati's life estate falls in. We hold only that Kisansing cannot turn out Parvati during her life-time.

We reverse the decree of the District Court, and restore that of the Subordinate Court, and order Kisansing to bear all costs in the District Court and in this Court.

*Decree reversed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.*

March 30. | SHRINIVAS, APPLICANT, v. RADHABAI AND MANJAPA, OPONENTS.\*

*Civil Procedure Code Act X of 1877, Sections 294 and 295—Competing decree-holders  
—Purchase by permission of Court.*

Where there are competing decree-holders who have applied for execution of their decrees, section 294 of the Civil Procedure Code (Act X of 1877) must be taken as subject to the provisions of section 295, so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree.

\* Application under Extraordinary Jurisdiction, No. 124 of 1881.

THIS was an application for the exercise of the Court's extraordinary jurisdiction.

The applicant Shrinivas, the opponent Manjapa and others held decrees against Radhabai. Manjapa sued out execution, and attached some immoveable property belonging to the said Radhabai. The Court fixed a day for its sale, and granted Manjapa permission to bid for and purchase it. Before this day the applicant Shrinivas made an application for execution of his decree, and prayed that the proceeds of the advertised sale might be rateably distributed between himself and Manjapa. The sale took place, and Manjapa purchased the property for Rs. 1,345, which amount the said Manjapa claimed to set off against the amount due to him under the provision of section 294, and refused to share it with the applicant.

The Subordinate Judge of Honavar, R. S. Manjnathaya, on the authority of *Maniklal Venilal v. Lakha and Mansing*(1) and *Jetha Mahdavi v. Najerali*(2) rejected the applicant's prayer for rateable distribution of the proceeds.

The applicant applied to the High Court.

*Shamrav Vithal* for applicant.

*Ghanasham Nilkanth* for opponents.

MELVILL, J.—We are unable to accept the construction put by the Subordinate Judge on sections 294 and 295 of the Civil Procedure Code Act X of 1877. There can be no principle upon which decree-holders should be deprived of their ordinary rights, merely because another decree-holder has been permitted to bid at the sale. Those ordinary rights are conferred upon them by section 295; and while section 294 is applicable as between the purchasing decree-holder and the judgment-debtor, and for convenience allows the former ordinarily to set off the purchase-money against his decree, instead of paying the money into Court and drawing it out again, the section must be taken as subject to the provisions of section 295 in cases in which there are competing decree-holders who have applied for execution.

(1) I. L. R. 4 Bom. 429.

(2) I. L. R. 4 Bom. 472.

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For these reasons we reverse the Subordinate Judge's decision on the preliminary point of the construction of sections 294 and 295; but before remanding the case for a fresh decision, we allow to the opponent Manjapa's pleader time to consult his client as to whether he wishes the sale set aside on the ground that he bid on the express understanding, which was justified by the order of the Subordinate Judge, dated 11th April, 1881, that he would be allowed to set off the purchase-money against his decree.

On 27th April, 1882, Mr. Ganasham, the pleader for the opponent Manjapa, informed the Court that he preferred that the sale should be set aside altogether.

It was ordered accordingly that the sale held on the 11th April, 1881, be set aside, and that the property be re-sold.

The parties to bear their own costs in this Court and the Court of the Subordinate Judge.

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ORIGINAL CIVIL.

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*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Latham.*

August 18,  
September 5.

AHMEDBHOY HUBIBBHOY (PLAINTIFF) v. VULLEEBHOY CASSUM-  
BHOY AND OTHERS (DEFENDANTS).\*

*Practice—Civil Procedure Code (Act X of 1877), Section 135—Discovery—  
Inspection—Trial of issue before inspection granted.*

The intention of section 135 of the Civil Procedure Code (Act X of 1877) is to give the Court the power of raising and determining an issue for the exclusive purpose of deciding the right to discovery of evidence which is to be used at the trial, and, therefore, from the nature of the case before the hearing of the cause.

It should be a rule of practice that when an order is made under section 135 of the Civil Procedure Code (Act X of 1877) by the Judge in Chambers, the suit should be set down for the trial of the particular issue as well as of the cause itself when it comes to a hearing before the same Judge.

SUMMONS in Chambers adjourned into Court to be heard before two Judges.

On the 29th of June, 1882, the plaintiff took out a summons calling upon the defendants to show cause why, before the plain-

\* Suit No. 486 of 1881.