

recognize the adjustment which had not been certified to it?

3. Whether the bond was void for want of consideration?

The Subordinate Judge was of opinion that (1) the satisfaction of the decree was the consideration for the bond; (2) that the Court could not recognize the adjustment or satisfaction, as it had not been certified to it; and (3) that the bond was void for want of consideration.

There was no appearance of parties in the High Court.

SARGENT, C. J.—We think that the Subordinate Judge was right in holding that the bond was void without consideration. The adjustment of the decree not having been certified to the Court, was not binding on the plaintiff, and, therefore, constituted no valid consideration.

1884

PANDURANG
RĀMCHANDRA
CHOWGHULE
v
NĀRĀYAN.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Kemball.

HARGOVAN PARBHUDA'S, DECREE-HOLDER *v.* HIRA' HARIBHAI,
JUDGMENT-DEBTOR.*

February 7.

Decree—Collector—Execution of a decree by Collector—Irregularities in execution sale—Power of a Civil Court to interfere.

When a decree is sent to a Collector for execution, the Civil Court ought not to control his proceedings, unless it is set in motion by one of the parties to the execution proceedings.

Quære.—Whether a Civil Court can, of its own motion, control the proceedings of the Collector to whom a decree has been sent for execution.

UNDER section 617 of the Civil Procedure Code (XIV of 1882) this case was submitted for the decision of the High Court by Rāo Sāheb M. B. Hora, Second Class Subordinate Judge of Anklesvar.

Hargovan obtained a decree against Hirā for Rs. 460 and costs, and applied for the execution of it in 1882. His application was granted, and the decree was sent to the Collector of Broach for execution. On the 12th April, 1883, the Māmlatdār of Anklesvar under the orders of the Collector put up for sale some immoveable property belonging to the judgment-debtor. At that

* Civil Reference, No. 63 of 1883.

1884

HARGOVAN
PARBHUDÁS
v
HIRÁ
HARIBHAI.

sale one Dámodar, being the highest bidder, was declared purchaser. Dámodar immediately paid one-fourth of the amount of the purchase-money, but failed to pay the balance before the sunset of the fifteenth day, as required by law. On the 4th May, 1883 (*i.e.*, twenty-one days after the auction sale), he appeared before the Mámlatdár, and, alleging illness as an excuse for his default, offered to pay the balance. The Mámlatdár, after taking evidence regarding the alleged illness, made an order on the 14th May, allowing Dámodar to pay the balance. It was accordingly paid, and the sale was confirmed on the 17th May. On the 7th July the Mámlatdár paid the sale proceeds to the judgment-creditor, Hargovan, under orders of the Subordinate Judge, who, however, was not then aware of the irregularities mentioned above. He first became aware of them when the Mámlatdár returned the execution proceedings as finally disposed of. None of the parties appeared to have complained to the Subordinate Judge of the irregularities of the Mámlatdár's proceedings.

The question referred by the Subordinate Judge was, whether the confirmation of the sale was legal, and, if not, whether the Court should sanction the Mámlatdár's illegal proceedings.

The Subordinate Judge was of opinion that the Mámlatdar's proceedings should be set aside as illegal.

Neither of the parties appeared in the High Court.

SARGENT, C. J.—Without expressing an opinion as to the power of a Civil Court to control the proceedings of a Collector to whom a decree has been referred for execution which, in the present state of the authorities, must be regarded as unsettled—*Rámkrishna Malhár Pohore v. Ganu Harji* ⁽¹⁾; *Máhádáji V. Karandikar v. Hari D. Chikane* ⁽²⁾; *Máhádo Prasád v. Hansa Kuar* ⁽³⁾—we think that, in any case, such control ought not to be exercised unless the Court is set in motion by one of the parties to the proceedings in execution.

(1) Printed Judgments for 1882, p. 64.

(2) I. L. R., 7 Bom., at p. 336.

(3) I. L. R., 5 All., 314.