

was silent about mesne profits subsequent to the institution of the suit, plaintiff was at liberty to assert his right to such profits in a separate suit. See also *Mussummat Bebea Sahodra v. Roy Jung Bahádur*⁽¹⁾. There is in fact no room for a difference of opinion on this point, as para. 2 of section 244 expressly reserves such a right of suit. We must, therefore, overrule this contention of the appellant.

There was only one other contention urged by the appellant, and that related to the *vadilki* allowance. The defendant claimed a right to deduct 1,200 Rupees reserved to him by the partition decree out of the monies received by him, and contended that no deduction should have been made in respect of the proportion chargeable to the allowance received from the Sátára Treasury, which was not included in the plaintiff's claim. We are not disposed to hold that the defendant has a first charge of the sort contended for by him. The *vadilki* allowance must be rateably apportioned. We accordingly reject the appeal, and confirm the decree of the lower Court with costs on appellant.

Appeal rejected.

(1) L. R., 8 I. A., 213.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

ANDA'NA'PA (PURCHASER), APPLICANT, v. BHIMRA'O A'NNA'JI
AND ANOTHER (DECREE-HOLDERS), OPPONENTS.*

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Execution—Decree—Decrees of different Courts against same judgment-debtor—Leave given by both Courts to judgment-debtor to raise amount by private sale—Civil Procedure Code (Act XIV of 1882,) Sec. 305—Confirmation of such sale by one Court—Subsequent application for confirmation to other Court—Practice—Procedure.

Panchlingápa Baslingápa obtained a decree against Venubái in the Court of the Second Class Subordinate Judge at Saundatti. He applied (darkhást of 1892) for execution, but Venubái, on 19th April, 1893, obtained permission, under section 305 of the Civil Procedure Code (Act XIV of 1882), to raise the amount of the decree by private sale on or before the 6th June, 1893, the day fixed for the sale. She obtained a certificate of leave under section 305.

* Application, No. 8 of 1894, under extraordinary jurisdiction.

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Another decree was obtained against Venubái in the Court of the First Class Subordinate Judge at Belgaum by one A'nnáji Rámchandra, and he attached in execution (darkhást 351 of 1892) the same lands, which were already attached by the Saundatti Court. From the Belgaum Court, however, Venubái also obtained a certificate under section 305 of the Civil Procedure Code, on 22nd April, 1893, authorizing a private sale.

Relying on these two certificates Venubái sold the lands under attachment to the applicant Andánápa bin Rachápa for Rs. 2,000 by deed dated 25th May, 1893. On the 28th June, 1893, Andánápa applied to the First Class Subordinate Judge in Belgaum, under section 305 of the Civil Procedure Code, for confirmation of the sale and that the purchase-money paid by him should be distributed as follows, *viz.*, Rs. 518-14-2 in satisfaction of the decree of the Belgaum Court, Rs. 128-7-10 in satisfaction of the decree of the Saundatti Court, and the balance, Rs. 1,352-10-0, to be paid to Venubái. The Court of Belgaum granted the application and directed that the above sum of Rs. 128-7-10 should be paid into the Court of Saundatti. On the 17th July, 1893, Andánápa applied to the Court at Saundatti to confirm the sale already confirmed by the Belgaum Court, and he brought into Court the said sum of Rs. 128-7-10. On the 19th June, 1893, while the above proceedings were going on, a third decree-holder (the opponent) had applied to the Second Class Subordinate Judge at Saundatti for execution of his decree. He objected to the confirmation of the sale applied for by the applicant. The Subordinate Judge allowed the objection and refused confirmation of the sale. The applicant then applied to the High Court under its extraordinary jurisdiction.

Held that the application to the Saundatti Court by Andánápa was superfluous and ought to have been rejected inasmuch as the sale had already been confirmed by a competent Court (*viz.* the Court of Belgaum) and nothing further remained to be done in regard to it.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order of Ráo Sáheb G. V. Patwardhan, Subordinate Judge of Saundatti, in an execution proceeding.

Panchlingápa Baslingápa obtained a decree against Venubái in the Court of the Second Class Subordinate Judge at Saundatti. He applied (darkhást 232 of 1892) for execution, but Venubái, on 19th April, 1893, obtained permission under section 305 of the Civil Procedure Code (Act XIV of 1882) to raise the amount of the decree by private sale on or before the 6th June, 1893, the day fixed for the sale. She obtained a certificate of leave under section 305.

Another decree was obtained against Venubái in the Court of the First Class Subordinate Judge at Belgaum by one Annáji Rámchandra, and he attached in execution (darkhást 351 of

1892) the same lands which were already attached by the Saundatti Court. From the Belgaum Court, however, Venubái also obtained a certificate under section 305 of the Civil Procedure Code, on 22nd April, 1893, authorizing a private sale.

Relying on these two certificates Venubái sold the lands under attachment to the applicant Andánápa bin Rachápa for Rs. 2,000 by deed dated 25th May, 1893. On the 20th June, 1893, Andánápa produced the deed in the Court of the First Class Subordinate Judge at Belgaum and applied for confirmation of the sale as required by section 305 of the Civil Procedure Code. He asked that the purchase-money paid by him should be distributed as follows, *viz.*:— Rs. 518-14-2 in satisfaction of the darkhást in the First Class Subordinate Judge's Court, Belgaum; Rs. 128-7-10 in satisfaction of the darkhást in the Saundatti Subordinate Judge's Court; and Rs. 1,352-10-0 for payment to Venubái.

The First Class Subordinate Judge of Belgaum on the application confirmed the sale, and ordered that Rs. 518-14-2 should be paid into Court at Belgaum under darkhást No. 351 of 1892, and that the amount due under the darkhást (No. 252 of 1892) of the Saundatti Court should be paid into that Court. In the order the Court stated that there was no objection to the balance being paid to Venubái.

Andánápa accordingly paid Rs. 1,352-10-0 to Venubái on that day and obtained her receipt.

On 17th July, 1893, Andánápa applied to the Second Class Subordinate Judge at Saundatti to confirm the sale, which, as above stated, had already been confirmed by the Belgaum Court. He brought in the money due (Rs. 128-7-10) under Panchlingápa's darkhást No. 232 of 1892.

On 19th June, 1893, while the above proceedings were going on, a third decree-holder (the opponent) had applied (under darkhást No. 295 of 1893) to the Saundatti Court for execution of his decree. He objected to the private sale being confirmed, contending that the whole money realized had not been produced in Court.

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The Saundatti Court allowed the objection and rejected the application to confirm the sale. The following is an extract from the judgment of that Court :—

“ I think the objection must prevail. Under section 295, Civil Procedure Code, this decree-holder is entitled to a rateable share in the money realized by the private sale under section 305, for his darkhást was presented on 19th June and the applicant produced the money and sale-deed on 17th July, 1893. Under section 305, Civil Procedure Code, it is provided that all the money payable under the private sale must be paid into Court and not to the judgment-debtor. Applicant ought to have, therefore, produced the money that remained with him after satisfying the darkhást of the Belgaum Court into this Court, and ought not to have paid to Venubái without the permission of this Court. The decree-holder in darkhást No. 295 of 1893 was certainly prejudiced by the applicant having paid the money to Venubái without producing it into this Court. I, therefore, must decline to confirm the sale to applicant by Venubái by the sale-deed, Exhibit 35, unless the whole money paid to Venubái is produced into this Court.

“ As the sale does not become absolute, the Rs. 128-7-10 produced by applicant in this Court cannot be applied towards the satisfaction of any decree; and the lands must be again put up to sale unless applicant produces the money paid to Venubái into this Court.”

Against the said order the applicant presented an application under the extraordinary jurisdiction of the High Court and obtained a rule *nisi* calling on the opponents Bhimráv A'nnáji and another to show cause why the order should not be set aside on the following among other grounds :—That the Court of the First Class Subordinate Judge of Belgaum, being a Court of superior grade to that of the Second Class Subordinate Judge of Saundatti, and that Court having confirmed the sale to the applicant, the Saundatti Court had no jurisdiction to re-open the question, and that the sale having been confirmed by the Court of the superior grade, there was no interest left in Venubái with respect to the property which could be sold over again.

Branson (with *Vásudeo G. Bhándárkar*) for the applicant in support of the rule :—The Court at Saundatti had no jurisdiction to sell the property again. Even our application to that Court for the confirmation of the sale was superfluous, and the rejection of that application does not in any way affect our title.

Shámráv Vithal, for the opponents, showed cause :—The sale was not valid until confirmed by both the Courts. Execution was pending in both Courts and both of them gave time

under section 305 of the Civil Procedure Code (Act XIV of 1882) to raise the money by private sale. The confirmation of both the Courts was, therefore, necessary to validate the sale. After the sale was confirmed by the Belgaum Court the applicant himself applied to the Saundatti Court for confirmation, and that Court not having confirmed the sale, the property was liable to be sold again. Section 285 of the Civil Procedure Code is not applicable to such a case. The applicant was bound to pay the money into the Saundatti Court instead of paying it to the judgment-debtor. Although we did not apply to the Belgaum Court which was the Court of a higher grade, nor apply for the transfer of our application to that Court, still we are entitled to share rateably in the money payable into Court. The Saundatti Court had power to act on the application made to it to execute the decree, although there was another application pending in the Belgaum Court—*Clark v. Alexander*⁽¹⁾; *Patel Nāranji v. Haridās Navalrām*¹.

FULTON, J. :—The facts are sufficiently stated in the Subordinate Judge's judgment. We think that the First Class Subordinate Judge having, under section 305 of the Civil Procedure Code, confirmed the sale to the applicant, there remained in the judgment-debtor Venubái no interest which could be sold to satisfy the opponents' decree.

Mr. Shámráv contended that having regard to the fact that on the 19th June the opponents had applied to the Saundatti Court to execute their decree against Venubái, it was not competent to the First Class Subordinate Judge to confirm the sale without taking cognizance of their application, but having regard to Mr. Justice Farran's judgment in the case of *Nimbáji v. Vádía*⁽³⁾ we cannot adopt this view inasmuch as they had neither obtained the transfer of their decree to the First Class Subordinate Court nor applied to that Court under section 295.

Our attention was called to the judgment of this Court in *Patel Nāranji v. Haridās Navalrām*⁽²⁾; but although this decision may be regarded as authority for the proposition that a sale

(1) I. L. R., 21 Calc., 200.

(2) I. L. R., 18 Bom., 455.

(3) I. L. R., 16 Bom., 683.

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ordered by an inferior Court before the attachment of such property by a Court of higher grade is not null and void in consequence of such attachment, it does not follow that the latter Court has not also power to sell the property or confirm the sale under section 305, nor is there any section of the Code which can be referred to in support of this proposition. It may be inconvenient that two Courts should have jurisdiction to sell the same property; but however this may be, it cannot, we think, be doubted that the Court of higher grade had at least concurrent jurisdiction to confirm the sale, and that having exercised its jurisdiction the applicant acquired a good title to the property sold.

Under these circumstances the application made by the applicant to the Subordinate Judge of Saundatti to confirm the sale under section 305 was superfluous and ought to have been rejected, not for the reasons given by the Subordinate Judge, but on the ground that as the sale had already been confirmed by a competent Court there remained nothing more to be done in regard to it.

The question as to the disposal of the item of Rs. 128-7-10 is a matter between the rival judgment-creditors on which we can express no opinion in this application.

Subject to the above remarks we discharge the order directing the lands to be again put up to sale, but confirm the order rejecting the prayer to confirm the sale. Parties to pay their own costs throughout.

Rule discharged.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

NATHUBHAI MULCHAND AND OTHERS (ORIGINAL PLAINTIFFS), APPLICANTS, v. NANA BA'BU AND ANOTHER (ORIGINAL DEFENDANTS), OP-
PONENTS.*

Decree against wrong person as representative—Execution, application for—Objection to application by person not party to decree—Failure of exercise of jurisdiction vested by law—Extraordinary jurisdiction—Civil Procedure Code (Act XIV of 1882), Sec. 622.

A person, not a party to a suit, is not entitled to object to the issue of an order for execution of the decree.

* Application, No. 27 of 1893, under the extraordinary jurisdiction.

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