

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Beaman.

MULCHAND DAGADU (ORIGINAL MONEY DEPOSITOR), APPLICANT, v.
GOVIND GOPAL AND TWO *OTHERS (ORIGINAL AUCTION-PURCHASER,
JUDGMENT-CREDITOR AND JUDGMENT-DEBTOR), OPONENTS.*

1906.

July 25.

*Civil Procedure Code (Act XIV of 1882), Chapter XIX, section 310A—
Attachment—Private sale—Application to set aside sale—Sale under
attachment.*

Section 310A of the Civil Procedure Code (Act XIV of 1882) is applicable to a purchaser subsequent to attachment and prior to sale under the attachment.

Where there has been a subsequent sale following on the attachment, a person answering this description is one whose immoveable property has been sold under Chapter XIX of the Code.

APPLICATION under the extraordinary jurisdiction (section 622 of the Civil Procedure Code, Act XIV of 1882) against an order passed by J. J. Heaton, District Judge of Násik, dismissing an appeal against an order of K. G. Kittur, Subordinate Judge of Pimpalgaum, granting a review.

One Punamchand Rupset in execution of a money decree attached certain immoveable property belonging to his judgment-debtor Mahadu valad Hari. The judgment-debtor being an agriculturist, the decree was sent for further execution to the Collector. While the attachment was pending, the property was sold by the judgment-debtor to Mulchand Dagdu, a minor, by a registered sale-deed, dated the 10th September 1901. Subsequently the Collector sold the property in execution of Punamchand's money decree and it was purchased at the auction-sale by one Govind Gopal Kulkarni on the 3rd May 1904. Mulchand Dagdu having, thereupon, come to know of the auction-sale, applied to the Collector on the 21st May 1904 to set aside that sale and offered to deposit the decretal amount but the Collector referred him to the Court which passed the decree. As the Court was then closed for the summer vacation, Mulchand Dagadu applied under section 310A of the Civil Procedure

* Application No. 61 of 1905 under extraordinary jurisdiction.

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Code (Act XIV of 1882) when the Court re-opened on the 6th June following and also deposited in Court the necessary amount. The Court accepted the deposit and set aside the auction-sale without issuing notice to the auction-purchaser. The auction-purchaser then applied to the Court on the 12th July 1904 to revoke the order setting aside the auction-sale on the ground that Mulchand Dagdu had no right to come in under section 310A of the Civil Procedure Code. On the said application the Court issued notices to all the parties concerned. At the hearing of the application the judgment-debtor Mahadu impugned the sale to Mulchand on the ground that he had not received the consideration for it. The Court framed issues but without recording findings on them reviewed its order setting aside the auction-sale on the ground that it was passed without issuing notice to the auction purchaser Govind Gopal and held that Mulchand was not entitled to have the auction-sale set aside under section 310A of the Civil Procedure Code. It therefore allowed the auction-sale to stand and directed Mulchand Dagdu to establish his right under his registered sale-deed in a regular suit.

Against the said order Mulchand appealed to the District Court which dismissed the appeal holding that the order cannot be said to have been made under section 244, nor was it appealable under section 629 of the Civil Procedure Code.

Mulchand, thereupon, preferred an application under the extraordinary jurisdiction (section 622 of the Civil Procedure Code).

Inverarity (with *R. R. Desai*) appeared for the applicant (private purchaser):—The Subordinate Judge was wrong in holding that we have no right to come in under section 310A of the Civil Procedure Code. Our only remedy lay under that section. It does not say anything with respect to a judgment-debtor: *Erode Manikkoth v. Puthiedeth*⁽¹⁾. Even section 276 of the code does not avoid our purchases: *Abdul Rashid v. Gappo Lal*⁽²⁾.

G. B. Rele appeared for the opponent 1 (auction-purchaser):—Under section 310A of the Code it is the right of the judgment-debtor to apply to set aside the Court-sale. A purchaser at a

(1) (1902) 26 Mad. 365.

(2) (1898) 20 All. 421.

private sale is not the judgment-debtor and he cannot present such an application: *Ramchandra v. Rakhmabai*⁽¹⁾.

[JENKINS, C. J.:—The sale in that case was prior to the attachment and not subsequent as in the present case.]

The decree under which the property was attached in the present case was merely a money decree and mere attachment under such decree cannot place the purchaser under a private sale in the shoes of the judgment-debtor.

S. R. Bakhle appeared for the opponent 3 (judgment-debtor).

Opponent 2 (judgment-creditor) did not appear.

JENKINS, C. J.:—This is an application to us under section 622 of the Civil Procedure Code.

The only question is whether the Subordinate Judge has committed an error within the scope of that section in holding that section 310A of the Civil Procedure Code was not applicable to a purchaser subsequent to attachment and prior to sale under that attachment. In our opinion, where there has been a subsequent sale following on the attachment, a person answering this description is one whose immovable property has been sold under the Chapter.

In deciding otherwise the learned Judge has failed to exercise a jurisdiction which was vested in him.

The decision of the learned Judge that the parties should determine the matters at issue between them in a suit under section 310A is, in our opinion, erroneous.

The rule is therefore made absolute; and the case must be sent back to the Subordinate Court for determination in the light of these remarks.

Costs will follow the result.

Rule made absolute.

G. B. R.

(1) (1898) 23 Bom. 450.