

Code. A similar repeal in the Criminal Procedure Code effected by the same repealing Act of 1914 escaped the vigilance of three leading text-book-writers, as I had occasion to point out in *Emperor v. Somya Hirya*<sup>(1)</sup>. There also, trouble was caused by the mode of repeal. A Code is so useful to work with that I deprecate any alterations being made which are avoidable or which are not contained in an Act which by its mere title is sufficient to put legal practitioners on their guard.

Solicitors for plaintiffs : Messrs. *Khambatta & Co.*

Solicitors for defendant : Messrs. *Little & Co.*

*Notice absolute : Cross-Summons dismissed.*

G. G. N.

## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Hayward.*

RAOJI WALAD BABURAO (ORIGINAL DEFENDANT), APPLICANT v. BANSILAL NARAYAN MARWARI AND ANOTHER (ORIGINAL PLAINTIFFS), OPPOSANTS.

1918.  
February 21.

*Civil Procedure Code (Act V of 1908) section 115, Order XXI, Rule 89—Decree—Execution—Auction sale—Deposit in Court—No application to set aside sale—Sale confirmed—Subsequent application to set aside sale—Application refused—No irregularity—Titles arising from judicial sales should be settled as soon as possible.*

The property of the applicant was sold in execution of a decree against him. Within thirty days of the date of sale the applicant deposited in Court the amount of the decree together with interest on the purchase money for the property sold. The applicant, however, having made no application to set aside the sale, the sale was confirmed and the Court called upon the applicant to take away his money. The applicant then applied that his deposit should

<sup>(1)</sup> (1918) 43 Bom. 134 at p. 146.

<sup>2</sup> Civil Application No. 74 of 1918 under Extraordinary Jurisdiction.

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be considered as an application to set aside the sale. Having failed in both the lower Courts he applied to the High Court under section 115 of the Civil Procedure Code, 1908.

*Held*, that the application would not lie under section 115 of the Civil Procedure Code, as there was no defect whatever in jurisdiction and no irregularity in the exercise of jurisdiction.

The Civil Procedure Code, with the Limitation Act, provides a short period within which applications specifying their object should be made to set aside sales, and the shortness of time allowed may be taken as indicative of the policy of the Legislature that titles arising from judicial sales should be settled as soon as possible.

CIVIL application under extraordinary jurisdiction against the decision of F. K. Boyd, District Judge at Nasik, confirming the decree passed by B. D. Sabnis, Subordinate Judge of Pimpalgaon.

Application to set aside sale.

The opponent No. 2 obtained a decree against the applicant in suit No. 741 of 1910 and in execution of the decree, in Darkhast No. 586 of 1914, attached the applicant's land and got it sold through Court. Within thirty days of the date of sale, on the 3rd September 1915, the applicant deposited in Court the amount payable to the auction-purchaser and to the decree-holder under Order XXI, Rule 89, Civil Procedure Code, 1908, and also made an application on the same day requesting the Court to receive the payment as made and to pass a receipt for the same. No application was, however, made at that time to set aside the sale. The sale was confirmed in January 1916 and thereafter the Court gave notice to the applicant to take away his money.

The applicant thereupon applied that his deposit should be considered as an application to set aside the sale. The application was refused on the 2nd September 1916 and the applicant did not appeal though he was represented by a pleader.

On the 5th September 1916, the applicant again applied that the Court should treat the first application of the 3rd September 1915 as a regular application under Rule 89 of Order XXI and set aside the sale under its inherent powers under section 151, Civil Procedure Code.

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The auction-purchaser opposed on the ground *inter alia* that the application was not stamped with a proper Court fee and was thus not an application under Order XXI, Rule 89, that the application was barred by *res judicata* and that the sale being confirmed it could not be set aside.

The Subordinate Judge refused to act under section 151 of the Civil Procedure Code and dismissed the application.

On appeal, the District Judge confirmed the order.

The applicant applied to the High Court under section 115 of the Civil Procedure Code, 1908.

*R. A. Jahagirdar*, for the applicant.

*P. B. Shingne*, for opponent No. 1.

*M. R. Bodas* and *K. M. Bodas*, for opponent No. 2.

SCOTT, C. J. :—Less than thirty days before the 3rd of September 1915 the property of the applicant was sold in execution of a decree against him, and on the 3rd September, the applicant deposited in Court the amount of the decree together with interest on the purchase money for the property sold. He obtained from the Nazir of the Court who received the money a receipt which recorded that it was paid on account of the Darkhast and on account of interest. But no application was made at that time to set aside the sale. Presumably the intention was to do what was required under Order XXI, Rule 89. No application having been

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made to set aside the sale, the sale was confirmed in January 1916, and thereafter the Court gave notice to the applicant as depositor to take away his money. He then applied that his deposit should be considered as an application to set aside the sale. That application was refused, and the applicant did not appeal, although he was represented by a pleader. Then later he repeated his previous application which was rejected by the Subordinate Judge, and after that an appeal was preferred to the District Court, which was asked to deal with the matter under section 151 of the Code, for making such order as might be necessary to prevent abuse of the process of the Court or for the ends of justice. The learned District Judge having rejected the appeal, the applicant now comes here under section 115 of the Code for the interference of the High Court. It is difficult to see how this application will lie under section 115. There is no defect whatever in jurisdiction, no irregularity in the exercise of jurisdiction. All the irregularities are on the side of the applicant. The Code, with the Limitation Act, provides a short period within which applications specifying *their object should be made to set aside sales*, and the shortness of time allowed may be taken as indicative of the policy of the Legislature that titles arising from judicial sales should be settled as soon as possible. Now we have an application before us, three years after the confirmation of a judicial sale, to set it aside, the reason being that the applicant who ought to have applied to the Court did not apply to the Court when he deposited his money. We should be violating the principle under which the rules are framed for obtaining finality at an early date in such matters if we were to accede to the present application, even if we assume that it could be brought within the terms of section 115. The applicant's only remedy is to take back his money.

The concession which is allowed to judgment-debtors is only allowed under certain conditions. Those conditions do not exist in the present case. We must, therefore, discharge the rule with costs. One set of costs.

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*Rule discharged.*

J. G. R.

### CRIMINAL APPELLATE.

*Before Sir Basil Scott, Kt., Chief Justice; on difference between Mr. Justice Heaton and Mr. Justice Shah.*

EMPEROR v. SABITKHAN BAHADURKHAN<sup>o</sup>.

1919.

March 8.

*Indian Evidence Act (I of 1872), sections 30, 114, 133—Confession by co-accused—Evidence against the accused—Amount of corroboration.*

The accused was charged with the murder of his brother in concert with two associates with whom he was jointly tried for the offence. The principal evidence against the accused was the confessions of the two co-accused. Other facts established in the case were these. The accused had a wife and children, but no means to support them; he had to work as a coolie in the Forest Department. He was continually importuning the deceased who was rich but had no wife or children, for assistance which was continually refused, and although the two brothers lived in the same building they did not associate. About a fortnight after the disappearance of the deceased the accused made free with the grain which was collected in his brother's bin; and on several occasions gave rice from it to his two associates. Three months after the event, the accused told a shop-keeper that his brother had gone to Miraj for medical treatment. After the crops had been got in he began to ask the tenants of his brother to pay their rents to him. Shortly afterwards, the accused, when questioned by the Ranger of the forest, replied that his brother had gone to Miraj and that no letter had come. Later, the accused received a letter through post, purporting to come from his brother, which directed the accused to collect the rents and pay the assessment. The muster-roll kept by the Forest Officer showed that the accused was absent from his work on the day of the offence and for some days after. The trial

<sup>o</sup> Criminal Appeal No. 425 of 1918.