

(1879) 08 AHC CK 0004

Allahabad High Court

Case No: None

Gopal Singh

APPELLANT

Vs

Dular Kuar

RESPONDENT

Date of Decision: Aug. 11, 1879

Citation: (1880) ILR (All) 354

Hon'ble Judges: Straight, J; Spankie, J

Bench: Division Bench

Judgement

Spankie, J.

There was some preliminary argument, though the objection cannot be said to have been distinctly raised by respondent's pleader, as to whether the auction-purchaser was in a position to appeal. By Section 311 of Act X of 1877 the decree-holder or any person whose Immovable property has been sold may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting the sale. In this case the judgment-debtor objected, and notice was served upon the decree-holder and the auction-purchaser. Upon the judgment-debtor's objection the sale was set aside. An appeal against the order setting aside the sale is admissible under letter (m), Section 588 of the Civil Procedure Code. The auction-purchaser appeals. It is true that the auction-purchaser as such cannot apply u/s 311 to set aside & sale on the ground of irregularity. That application is confined to the decree-holder and the person whose Immovable property has been sold. But if the auction-purchaser has been made a party to the proceedings under Sections 32 and 647 of the Code, and if he has appeared on service of notice and has shown cause why the sale should not be set aside, then if the order be against him, I see no bar to his availing himself of the appeal allowed bylaw. I would say that the appeal is admissible, and in this view I follow a ruling to which I was a party in the case of Kanthi Ram v. Bankey Lal (unreported) decided on the 11th June 1879. If, however, my hon'ble colleague has a doubt upon this point, I am willing that it should be referred for the consideration of the Court at large. On the merits this appeal should be decreed. (The learned Judge then proceeded to determine the

appeal).

Straight, J.

2. I am glad to have had an opportunity of carefully looking at the several sections of Act X of 1877 relating to the setting aside of sales in execution of decree, and to the title of the parties who may be heard upon the applications of that kind. In the present case the appellant is to be found in the person of the auction-purchaser, and although in Sections 311 and 312 he is not specifically referred to as one of the persons who may go to the Court for relief, yet in the proceedings in the execution department he was made a defendant u/s 32, I presume upon the ground that his presence was necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved, so that he became to all intents and purposes a party to the proceedings, and as such I think entitled to all the rights that there were in the litigation either in the judgment-debtor* or the decree-holder. Consequently as they would both of them have a right of appeal against an order setting aside or confirming a sale u/s 588, I think that the auction-purchaser, having been made a party to the proceedings, may as in the present case lodge an appeal. Therefore agreeing with the views of Mr. Justice Spankie in this matter, and with those expressed by him and Mr. Justice Oldfield in a case decided by them on the 11th June 1879, of Kanthi Ram v. Bankey Lal (unreported), I see no reason for referring the point as to the right of appeal of an auction-purchaser to the Pull Bench. (The learned Judge then proceeded to determine the appeal.)