

Corporation Act and I am on the question of interpretation alone prepared to say that the appellants are not liable to pay either a separate fee of Rs. 44 for each manufacturing process in the Chemical Works or any separate licence fee on the electric motors used in their factories, except, of course, in the case of the power house.

Mr. Chatterjee does not ask us to quash the criminal proceedings pending against the appellant-company, and there is really no occasion for us to do so. That matter can be, and must necessarily be, dealt with by the criminal court where the prosecution is pending.

For these reasons, I would allow this appeal and, accepting the writ petition, direct that the extra licence fee indicated above must not be charged and a writ should issue accordingly. Considering the circumstances, the parties should, in my opinion, be left to their own costs and I would so order.

S. K. Kapur, J.—I agree.

B.R.T.

APPELLATE CIVIL

*Before Daya Krishan Mahajan, J.*

TARA CHAND,—*Appellant.*

*versus*

VISHAN DASS AND ANOTHER,—*Respondents.*

E.S.A. No. 1364 of 1962.

March 25, 1966

*Code of Civil Procedure (V of 1908)—S. 73 and O. 21 R. 72—Property of judgment-debtor ordered to be sold in execution of a decree—Decree-holder of the judgment-debtor in another decree applying for rateable distribution—Whether competent to purchase the property in execution sale.*

*Held*, that according to section 73 of the Code of Civil Procedure, the appellant had made an application for execution of his decree to the Court and in that application had prayed for rateable distribution. Therefore the property was also being sold in the execution of his decree and his case strictly fell under Order 21 Rule 72. He could not, therefore, bid at the auction-sale and purchase the property without obtaining leave of the Court.

Tara Chand *v.* Vishan Dass, etc. (Mahajan, J.)

*Execution Second Appeal from the order of Shri Pritam Singh Sekhon, Senior Sub-Judge, Gurgaon, dated the 28th May, 1961, affirming that of Shri D. R. Khanna, Sub-Judge 1st Class, Gurgaon, dated the 21st November, 1961, setting aside the sale under O. 21 R. 72(3) C.P.C. and holding Tara Chand decree-holder liable for the consequences.*

S. C. GOYAL, ADVOCATE, for the Appellant.

DALIP CHAND GUPTA, ADVOCATE, for the Respondents.

#### JUDGMENT

MAHAJAN, J.—The short contention that is advanced by the learned counsel for the appellant in this appeal is that there is no bar to his client, who is also a decree-holder of the judgment-debtor in another decree, in bidding and purchasing the property of the judgment-debtor in execution of a sale held in a decree passed in favour of another decree-holder. For his contention, he has relied on the decision in *Maung Chit Hlaing v. N.A.R.M. Chetty Firm* (1). That decision, *prima facie*, supports his contention; but as will be presently shown, it has no application to the facts of the present case.

Vishan Dass, got a money decree for Rs. 500 against Chaman Lal. Chaman Lal paid Rs. 200 to Vishan Dass and only Rs. 300 remained to be paid. This amount was not paid. Vishan Dass, therefore, made an execution application with regard to the balance of the decretal amount on the 22nd April, 1961, and in that application, he got some immovable property belonging to the judgment-debtor attached. Tara Chand had also obtained a decree against Chaman Lal and made an application under section 73 of the Code of Civil Procedure for rateable distribution. The attached property was put to sale and Tara Chand, without obtaining leave of the Court as required by Order 21, rule 72 of the Code of Civil Procedure, bid at the auction and purchased the property. As a matter of fact, Tara Chand, had applied for permission to bid at the auction and his application had been rejected. Chaman Lal, then brought the present application under Order 21, rule 72, sub-clause (3) for setting aside the sale. This application has been allowed by the executing Court. An appeal against this decision was rejected by the lower appellate Court. Hence, the present second appeal.

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(1) A.I.R. 1924 Rangoon 81.

The language of Order 21, rule 72 of the Code of Civil Procedure reads thus—

- “72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.
- (2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.
- (3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order; and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.”

And the provisions of section 73 may also be set out in order to illustrate the fallacy of the argument of the learned counsel for the appellant—

- “73. (1) Where assets are held by a Court and *more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:*

Provided as follows:—

- “(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;
- (b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court

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may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

- (c) where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree; thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees for the payment of money against the judgment-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

- “(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets;

- (3) Nothing in this section affects any right of the Government.”

According to the learned counsel for the appellant, Tara Chand, is not the holder of the decree in execution of which the property is sold and, therefore, it was not necessary for him to obtain permission before bidding. This contention loses sight of the fact that according to section 73 of the Code of Civil Procedure, Tara Chand had made an application for execution of his decree to the Court and, in that application, had prayed for rateable distribution. therefore, the property was also being sold in the execution of the decree of Tara Chand and his case strictly falls under Order 21, rule 72. So far as the Rangoon decision is concerned, in that case, a decree-holder, who had a decree against the judgment-debtor whose property was being sold, had made an application under section 73. In that situation, it was observed by Heald J., as follows—

“The wording of Order 21, rule 72 shows that the rule has no application to the holders of decrees other than those in execution of which the property is sold.”

In the Rangoon case, the property was not being sold at the instance of the decree-holder, who had bid at the auction sale, the interpretation placed by that Court on Order 21, rule 72 would be fully justified. But, in the present case, by reason of section 73 of the Code of Civil Procedure, Tara Chand had made an application for execution of the decree in his favour and in execution the property in dispute had been put to auction sale. Therefore, the provisions of Order 21, rule 72, clearly come into play. That being so, no fault can be found with the decision of the Courts below.

The result, therefore, is that this appeal fails and is dismissed with costs.

R.S.

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur, J.*

ARJAN SINGH, AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1218 of 1964.

March 25, 1966

*East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—S. 14(2)—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949,—Rule 4—Whether ultra vires the Constitution and section 14(2)—Provision for constituting village committee for consultation by Consolidation Officer—Whether gives arbitrary power and is ultra vires.*

*Held*, that under section 14(2) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the power of the Consolidation Officer in framing a scheme is far from being unfettered as the scheme is to be the product of his meetings with the landowners and non-proprietors and a consultation with the committee which he is to constitute for this purpose.

*Held*, that sub-section (2) of section 14 of the Act does not require that the manner of choosing the consultative committee is to be prescribed by rules; it is only the manner in which advice of the landowners is to be sought that is the