

Mulchand Dagdu Vs. Govind Gopal Kulkarni

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Court : Mumbai

Decided On : Jul-25-1906

Reported in : (1906)8BOMLR578

Judge : Lawrence Jenkins, K.C.I.E., C.J. and ;Beaman, J.

Appeal No. : Civil Application No. 61 of 1905

Appellant : Mulchand Dagdu

Respondent : Govind Gopal Kulkarni

Disposition : Application allowed

Judgement :

Lawrence Jenkins, K.C.I.E., C.J.

1. This is an application to us under Section 122 of the Civil Procedure Code.
2. 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.
3. In our opinion, 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 the Chapter.

4. In deciding otherwise the learned Judge has failed to exercise a jurisdiction which was vested in him.
5. 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.
6. 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.
7. Costs will follow the result.

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