be enforced even if both parties objected to it. Such was the case in *Ghulam Khan* v. *Muhammad Hassan* (1). Their Lordships of the Judicial Committee have laid it down very clearly in that case, that once a suit has been instituted all proceedings in arbitration are subject to the control of the Court. It is not permissible to the parties to deprive the Court of its jurisdiction by private reference to arbitration; and no award made on such reference, unless consented to by both parties, can be enforced in the suit.

The view of the law taken by the learned Subordinate Judge is correct. This appeal is accordingly dismissed with costs.

CUMING J. I agree.

R. K. C.

(1) (1901) I. L. R. 29 Calc. 167. (P. C.)

APPELLATE CIVIL.

Before Cuming and Cammiade JJ.

BHARAT CHANDRA PAL

v.

GAURANGA CHANDRA PAL.*

1927

July 13.

Attachment before Judgment—Immoveable property—Civil Procedure Code (Act V of 1908) O. XXXVIII, rr. 5, 7—Mode of attachment—Prohibitory order—O. XXI, r. 54—Proclamation.

In order to invoke the aid of section 64 of the Civil Procedure Code on behalf of a decree-holder an attachment of immoveable property under Order 38 must have been made in the manner prescribed in Form 24, Appendix E, as contemplated by Order 21, rule 54, clause 1. A proclamation by beat of drum and affixing on the property a copy of the order in

* Appeal from Appellate Decree, No. 224 of 1925, against the decree of Atul Chandra Das Gupta, Subordinate Judge of Tippera, dated Sep. 22 1924, reversing the decree of Nagendra Kumar Bose, Munsif, Nabinagar, dated Oct. 8, 1923.

1927

BHARAT CHANDRA PAL v. GAURANGA CHANDRA PAL.

Form 5, Appendix F, does not constitute an attachment under the Civil Procedure Code.

Satya Charan Mukerji v. *Madhab Chandra Karmakar* (1) followed.

SECOND APPEAL by the defendant.

The plaintiff in 1916 sued one Shiromani on a money-bond and obtained an order of attachment before judgment of his *raiyati* holding. The order of attachment was carried out by beat of drum and affixing an order in Form No. 5 of Appendix F of the Civil Procedure Code on the property in suit. In 1920 Shiromani sold his holding to the defendant and in 1921 the plaintiff brought the holding to sale in execution of his money-decree and purchased it himself. Thereafter he brought the present suit for declaration of title and recovery of possession.

The Munsif dismissed the suit holding that there had been no legal attachment and s. 64 of the Civil Procedure Code did not help the plaintiffs. On appeal the Subordinate Judge took the view that the plaintiff's attachment before judgment was valid and decreed the suit. Thereupon the defendant appealed to the High Court.

Babu Upendra Kumar Roy (with him *Babu Deb Lal Sen*), for the appellant. Section 64 of the Civil Procedure Code has no application to the facts of this case. The attachment relied on by the plaintiffs was not valid and operative in law. The peon did not attach the property in accordance with the provisions of Order XXI, rule 54, C. P. C., which is the only provision for the attachment of immoveable property. O. XXXVIII, r. 7, refers to the manner in which attachment before judgment has to be made. In the present case the peon served only a notice on the 22nd November, 1916, under Form No. 5, Appendix F, First Schedule, Civil

(1) (1904) 9 C. W. N. 693.

Procedure Code, but no prohibitory order in Form No. 24, Appendix E, was served on the defendant. This was essential under O. XXI, r. 54. O. XLVIII. r. 3, makes these forms applicable to an attachment before judgment. The provisions of the Code should be strictly complied with. Refers to *Indro Chunder Baboo and another* v. *Mr. Hamilton Grant Dunlop* (1), *Dwarknath Biswas* v. *Ram Chunder Roy* (2), *Ramanayyudu and three others* v. *Boya Pedda Basappa and two others* (3), *Sinnappan* v. *Arunachalam Pillai and two others* (4), *Satya Charan Mukerji* v. *Madhab Chandra Karmakar* (5), *Mahendra Narain Saha and others* v. *Gurudas Bairagi and another* (6).

Babu Hemendra Kumar Das, for the respondents. O. 38, r. 7 only refers to the manner and mode of making the attachment. No prohibitory order need be passed in cases of attachment before judgment as contemplated by O. XXI, r. 54, clause (*1*). It has only got to be shown that the mode prescribed in clause (*2*) of O. XXI, r. 54, has been complied with, and if that is satisfied as in the present case (refers to the peon's report) the attachment is legal and operative. The order for attachment in this case was passed under O. XXXVIII, r. 5, clause (*3*), and it was promulgated under Appendix F, Form No. 5, which also directs attachment of the properties mentioned in the Schedule. Though the said notice was addressed to the bailiff it was duly served as contemplated by O. XXI, r. 54, clause (*2*). There was a subsisting attachment at the date of the defendant's purchase; hence under s. 64, C. P C., his purchase was void.

(1) (1868) 10 W. R. 264.
(2) (1870) 13 W. R. 136.
(3) (1919) I. L. R. 42 Mad. 565.
(4) (1919) I. L. R. 42 Mad. 844 (F. B.).
(5) (1904) 9 C. W. N. 693.
(6) (1916) 23 C. L. J. 392.

1927

BHARAT CHANDRA PAL v. GAURANGA CHANDRA PAL.

CAMMIADE J.

CAMMIADE J. The facts of the present case are as follows:—The plaintiff, who is the respondent before this Court, sued one Shiromani and another on a bond in the year 1916 and he obtained an order for attachment before judgment of a raiyati holding belonging to Shiromani. The order which was recorded by the learned Munsif in that cases was as follows: "On the "application of the plaintiff supported by an affidavit "I am satisfied that the defendants are about to "transfer their properties with a view to defraud "the plaintiff. It is therefore ordered that notice be "issued upon the defendants to show cause within "seven days from the service thereof why they should "not furnish security for money. In the meantime "I also order conditional attachment of the immoveable "properties mentioned in the plaintiff's application." The order was issued to the peon in Form No. 5 of Appendix F, directing the peon in case security was not given to attach the properties. Nothing further was done. Subsequently, the defendant in that suit, Shiromani, sold the tenancy to the defendant of the present suit. This was in the year 1920; and in the year 1921, the plaintiff brought the tenancy to sale in execution of his own decree and, having purchased it, he sued for a declaration of his title and for recovery of possession.

The learned Munsif who tried the suit dismissed it, holding that there had been no legal attachment and that therefore section 64 of the Code of Civil Procedure could not operate to nullify as against the decree-holder the transfer that had been made. The plaintiff appealed to the District Court. The learned Subordinate Judge who heard the appeal reversed the decree of the Munsif.

The only question, therefore, in the case is whether or not there was a proper attachment before judgment.

Attachments before judgment are dealt with in Order XXXVIII, rules 5 to 7 of the Code. Rule 5 states in what circumstances the Court may call upon the defendant to furnish security and at the same time make a conditional attachment of the property specified by the plaintiff. We are not concerned with rule 6, as no action was taken under that section. But rule 7 is relevant because it is the rule which lays down the manner in which attachments are to be effected. That rule states as follows: "Save as otherwise expressly "provided, the attachment shall be made in the "manner provided for the attachment of property in "execution of a decree". As there is no express provision on the subject in any of the rules relating to attachment before judgment, such attachments are governed by the provisions of Order XXI, rule 54, which relates to attachment of immoveable properties in execution of decrees. According to this rule, where immoveable property is to be attached, the Court is to pass an order on the judgment-debtor prohibiting him from transferring the property or making any charge thereon, and on all persons from taking any benefit from such transfer or charge; and further it provides that such order shall be proclaimed on the property or in its neighbourhood by beat of drum or other customary mode and that a copy of such order shall be affixed on some conspicuous part of the property and also in a conspicuous part of the Court house. Now, in the present case, no prohibitory order was given to the peon to publish. The prohibitory order contemplated by Order XXI, rule 54, is to be found in Appendix E, Form No. 24. No notice in that form was given to the peon to publish. According to the evidence of the peon what he did was to go to the locality and to proclaim by beat of drum that the property was attached and affix on the property

1927

BHARAT CHANDRA PAL v. GOURANGA CHANDRA PAL.

CAMMIADE J.

which he was directed to attach a copy of the order which was made over to him, namely, an order in Form No. 5 of Appendix F. This was clearly not a compliance with the provisions of rule 54, order XXI. In a previous case of this Court, *Satya Charan Mukherji* v. *Madhab Chandra Karmakar* (1), where the peon was given a proper prohibitory order to publish and no such order was published in the Court house as required by the rule it was held that there had been no legal attachment. The present case is much stronger as no prohibitory order was published at all. Therefore there was no legal attachment.

The learned Munsif was right in holding that the plaintiff was entitled to no relief in this suit and the Subordinate Judge's order reversing the Munsif's judgment is erroneous, and is set aside.

The appeal is allowed and the Munsif's decree is restored with costs of this Court as also those of the lower Appellate Court.

CUMING J. I agree.

R. K. C.

(1) (1904) 9 C. W. N. 693