

## APPELLATE CIVIL.

Before *Suhrawardy and Graham JJ.*

HARIDAS BASU

v.

NATIONAL INSURANCE COMPANY,  
LIMITED.\*

1931

April 21, 22.

*Execution of Decree—Attachment or sale of debt outside territorial limits of court, if legal—Code of Civil Procedure (Act V of 1908), s. 39 ; O. XXI, r. 46.*

In order to give jurisdiction to the executing court to attach or sell a debt, e.g., money due under an insurance policy, the debt must be either within the territorial jurisdiction of the executing court or the person against whom it is claimed is a resident within its jurisdiction.

It does not matter if the money is payable within the jurisdiction of the executing court ; the point is where the money was lying when execution was taken.

The discretion given in section 39 of the Civil Procedure Code indicates that the court *should* send the application for execution to another court when the property against which execution is sought is situate outside its jurisdiction.

*Begg Dunlop & Co. v. Jagannath Marwari* (1) followed.

*Nareshchandra Mitra v. Molla Ataul Huq* (2), *Surendra Nath Goswami v. Bansi Badan Goswami* (3) and *Bank of Bengal v. Sarat Ch. Mitra* (4) referred to.

Appeal from Appellate Decree by the plaintiff  
Haridas Basu.

The facts and arguments appear fully from the judgment.

*Sharatchandra Ray Chaudhuri* and *Tarakeswar-nath Mitra* for the appellant.

*Rupendrakumar Mitra* for the respondent.

*Cur. adv. vult.*

\*Appeal from Appellate Decree, No. 185 of 1930, against the decree of S. M. Masih, District Judge of Birbhum, dated Aug. 30, 1929, affirming the decree of Kunjabihari Ballabh, Subordinate Judge of Birbhum, dated July 28, 1927.

(1) (1911) I. L. R. 39 Calc. 104.

(3) (1916) 22 C. W. N. 160.

(2) (1929) I. L. R. 57 Calc. 1206.

(4) (1918) 4 Pat. L. J. 141.

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SUHRAWARDY J. One Shasibhushan Bhattacharya, living within the jurisdiction of the Munsif of Bolpur in the district of Birbhum, insured his life with the defendant company for Rs. 2,000 by policy No. 7218. He borrowed some money from the plaintiff, who obtained a decree for the amount against his legal representatives after his death, and put it in execution in the court of the Munsif at Bolpur, who had passed the decree. In execution of the decree, the policy, or, more correctly speaking, the amount due under the policy, was first attached by the Munsif of Bolpur under Order XXI, rule 46, Code of Civil Procedure, and subsequently sold by him and purchased by the plaintiff. Not having obtained satisfaction from the defendant, the plaintiff brought the present suit to recover the amount to which he said he was entitled by his purchase of the debt as aforesaid. The plea of the defendant company was that the Bolpur court had no jurisdiction to sell the debt due under the policy and so the purchase by the plaintiff did not give him the right to recover it from the defendant. The defendant further objected that the suit did not lie in the court of the Subordinate Judge of Birbhum. As to the second ground of objection, the trial court held that it had jurisdiction to entertain the suit and the learned District Judge, on appeal, did not consider this point, as, in his opinion, the plaintiff's suit failed on other grounds. The defendant, however, desires to support the decree of the court below on this ground also.

On the first objection of the defendant, both the courts have held that the Bolpur court had no jurisdiction to attach the debt due from the defendant company and had consequently no jurisdiction to sell it and that, by his purchase at such sale, the plaintiff did not acquire any right to recover the money. The learned District Judge, after discussing the law and facts of the case, has recorded his findings in these words: "I fully agree with the conclusions arrived at by the learned Subordinate Judge and

“hold that order of attachment was *ab initio* void  
 “and the alleged sale subsequently held gave no right,  
 “title or interest to the decree-holder, the plaintiff in  
 “this case.” In this view of the matter, both the  
 courts below have dismissed the plaintiff’s suit and  
 the plaintiff has appealed.

It has not been seriously pressed that the attachment under Order XXI, rule 46, Code of Civil Procedure, of the debt was a valid attachment. But it has been argued that any irregularity in or even absence of attachment does not vitiate the sale and, in support of this contention several cases have been cited, of which the latest is *Nareschandra Mitra v. Molla Ataul Huq* (1), in which all the earlier cases have been considered. As a pure question of law, there can be no dispute that the invalidity or absence of attachment would not invalidate the sale, inasmuch as the order of attachment is only a prohibitory order issued on the judgment-debtor and the public in order to protect the interest of the execution creditor. But this view of the law is of no help to the plaintiff in the present case. In all those cases, the court had jurisdiction to sell the property. The executing court, like the court entertaining a suit (except in case of breach of contract), must have territorial jurisdiction over the subject matter against which execution is sought. Where it has no such jurisdiction, the provisions of section 39, Code of Civil Procedure, must apply, that is to say, the executing court should send the application for execution to any other court which has such territorial jurisdiction. The word “may,” used in section 39, does not mean that it is in the discretion of the court, which passed the decree, either to execute the decree itself or to send the application for execution to another court, where the property, against which execution is sought, is situated outside the jurisdiction of the court which passed the decree. The discretion given there indicates that the court should send the application for

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execution to another court, where it thinks that the decree is executable in the way prayed for. "Speaking generally, it is an accepted principle of international jurisprudence that the jurisdiction of a court in enforcing execution of its decrees is restricted by its territorial limitations. That is to say, the jurisdiction of courts is circumscribed by and co-extensive with its territorial limits. Thus a court desiring to seize or attach the property of a judgment-debtor outside its jurisdiction, and where such property is in the hands of, or custody of another, also outside the jurisdiction, such property sought to be attached in aid of the executing court can only be reached by a regular method of procedure which has been prescribed by the Rules of the Civil Procedure Code, and similar codes which prevail in all countries, *viz.*, the decree of the executing court must be transferred to the local limits of the jurisdiction of the external court within which the property sought to be attached is for the time being." *Per* Atkinson J. in *Bank of Bengal v. Sarat Ch. Mittra* (1).

If the moveable property, such as money, against which execution is asked for, is not within the territorial limits of the executing court, the only other way, in which that court may have jurisdiction to execute the decree, is when the person, against whom execution is sought, is or resides within the jurisdiction of that court. Except where these or one of these circumstances exist or exists, the executing court has no jurisdiction to seize property which is not within its territorial jurisdiction or where the person against whom execution is sought does not reside within its territorial jurisdiction. This point has been settled by the decision in *Begg Dunlop & Co. v. Jagannath Marwari* (2), where the question arose with regard to the validity of attachment of a certain sum of money lying outside the jurisdiction of the executing court. The learned Judges say "It is not competent to a court, in execution

(1) (1918) 4 Pat. L. J. 141.

(2) (1911) I. L. R. 39 Calc. 104, 112.

“of a decree for money, to attach at the instance of the decree-holder, a debt payable to the judgment-debtor outside the jurisdiction” by a person not a resident within the jurisdiction of that court. But Mr. Ray Chaudhuri, on behalf of the appellant, argues that, even though the attachment was bad in law, and the court at Bolpur had no jurisdiction to attach the money in the hands of the defendant, it had still the jurisdiction to sell the debt due to the deceased judgment-debtor. The condition that, in order to give jurisdiction to the executing court, the debt must be either within the jurisdiction of the executing court or the person against whom it is claimed is a resident within its jurisdiction, applies equally to attachment and to sale. If a property cannot be attached being outside the jurisdiction of a court, it can neither be sold by that court. In *Surendra Nath Goswami v. Bansi Badan Goswami* (1), the view expressed in *Begg Dunlop & Co. v. Jagannath Marwari* (2) was confirmed and it was further observed that an inferior court should not be allowed to usurp jurisdiction it did not possess and the order passed by a court by usurpation of jurisdiction cannot be allowed to stand on a consideration that similar order would have been made on the merits by a court of competent jurisdiction.

In the present case, there can be no quarrel about the facts. The debt is due from the company, which carries on its business at Calcutta. According to the decision in *Begg Dunlop's* case (2), the location of the debt is where the defendant resides. The debt and the debtor both being outside the jurisdiction of the Bolpur court, that court was not competent to sell the debt and the plaintiff did not acquire the right to recover it by his purchase at court sale.

A further question is raised, namely, that, under the contract evidenced by the policy, money is payable to the legal representatives of Shasibhushan at Bolpur and so the Bolpur court had jurisdiction over it.

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That question is relevant only with reference to the objection raised on behalf of the respondent that the suit is not maintainable in the Birbhum court. It makes no difference so far as the consideration of the present question is concerned as to where the money is payable. The point is where the money was lying when execution was taken. I agree with the learned District Judge in holding that the attachment and sale were both void and that the plaintiff has no title to the money in the hands of the defendant. In this view of the matter, it is not necessary to consider whether the Bolpur court had jurisdiction to entertain the suit. The result is that the appeal is dismissed with costs.

GRAHAM J. I agree. In my judgment, the appeal fails on the ground that the Bolpur court had no jurisdiction to attach or sell any property outside its territorial jurisdiction. The sale was, therefore, a nullity and could confer no right, or title upon the plaintiff: *Begg Dunlop & Co. v. Jagannath Marwari* (1). As was pointed out in that case, the proper procedure for attachment of the policy would have been to transfer the decree to the court within whose jurisdiction the debtor of the judgment-debtor resided. That course was not adopted. As my learned brother has stated, the case referred to above was subsequently followed in another case in this Court: *Surendra Nath Goswami v. Bansi Badan Goswami* (2).

*Appeal dismissed.*

A. A.

(1) (1911) I. L. R. 39 Calc. 104.

(2) (1916) 22 C. W. N. 160.