

*Before Mr. Justice Pontifex and Mr. Justice Field.*

1881  
May 12.

OBHOY CHURN COONDOO AND ANOTHER (PLAINTIFFS) v. GOLAM  
ALI, *alias* NOCOURY MEAH (DEFENDANT).\*

*Jurisdiction—Act VI of 1871, s. 18—Sale in Execution of Decree—  
Civil Procedure Code (Act X of 1877), s. 285.*

A, who had obtained a decree in the Court of the Second Munsif of B, in September 1877, attached certain property within the jurisdiction which had been assigned to the Munsif by the District Judge, under s. 18 of Act VI of 1871. In the previous month, C, who had obtained a decree in the Court of the Additional Munsif of B (to whom jurisdiction had similarly been assigned), had attached the same property. The sale in execution of A's decree took place first, and A became the purchaser. A then objected in the Court of the Additional Munsif that the property could not again be sold; but his objection was overruled, and two days subsequently, the property was again put up for sale in execution of C's decree, and he became the purchaser. A brought various suits against the tenants for arrears of rent, in which C intervened.

*Held*, that the jurisdictions of the Munsifs were confined to the particular limits assigned to them, and that, as the property was situate within the limits assigned to the Second Munsif, the Additional Munsif had no jurisdiction to attach or sell it, and that the attachment by C was made improperly and without jurisdiction.

*Quærs.*—Whether s. 285 of the Civil Procedure Code applies to immoveable property?

THIS was a suit for the recovery of arrears of rent in respect of land situated within the jurisdiction of the Second Munsif of Barisal. The land had formerly belonged to one Ram Kanhye Shaha, against whom the plaintiffs obtained a decree in the Court of the Second Munsif of Barisal. One Golam Ali had also obtained a decree against Ram Kanhye Shaha, but in the Court of the Additional Munsif of Barisal, to whom another thana had been assigned by the District Judge. Both the plaintiffs and Golam Ali attached the property in

\* Appeal from Appellate Decrees, Nos 2507 and 2466 of 1879, against the decree of Baboo Nuffer Chunder Bhutto, Second Subordinate Judge of Backergunge, dated the 30th July 1879, reversing the decree of Baboo Doorga Churn Sen, Munsif of Barisal, dated the 27th December 1878.

execution of their decrees; Golam Ali in August 1877, and the plaintiffs in September 1877. The same day was fixed for the sale, and it was held by the same officer. The properties advertised by the Second Munsif were sold first, and the plaintiffs themselves, on the 4th December 1877, purchased the property which they had attached. On the following day, the plaintiffs objected before the Additional Munsif, that the same property could not be sold again in his Court. The objection was overruled, on the ground that the plaintiffs' purchase was collusive, and the property was again put up to sale, and was purchased by Golam Ali on the 6th December. The plaintiffs took formal possession through the Court, and subsequently Golam Ali also took formal possession through the Court. The plaintiffs then brought several suits for rent against the ryots, in which Golam Ali intervened. The Munsif of Barisal gave the plaintiffs a decree, which was reversed by the Subordinate Judge.

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The plaintiffs appealed to the High Court.

Baboo *Aushootosh Dhur* and Baboo *Byddonath Dutt* for the appellants.

Mr. *W. M. Dass* and Baboo *Bamachurn Banerjee* for the respondent.

The judgment of the Court (PONTIFEX and FIELD, JJ.) was delivered by

PONTIFEX, J.—The plaintiffs in this case having obtained a decree in the Court of the Second Munsif of Barisal, attached certain property within the jurisdiction of the Second Munsif. That attachment was made in September 1877. But one Golam Ali had obtained a decree in the Court of the Additional Munsif of Barisal, and had, under such decree, directly attached the same property prior to the plaintiffs' attachment, viz., in August 1877. A sale took place under the plaintiffs' attachment first, and the plaintiffs purchased on the 4th December in execution of their own decree. Subsequently, a sale took place on the 6th December under Golam Ali's attachment, and he purchased in execution of his decree. The plaintiffs afterwards brought several rent-suits against the ryots occupying

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the land, and Golam Ali intervened in those suits. Two of those suits have now come on appeal before us, and the question to be decided in these appeals is, whether the plaintiffs are entitled to recover rent from the ryots. Now, the Subordinate Judge has held, that inasmuch as the plaintiffs' purchase took place under an attachment later in point of date than the attachment by Golam Ali, nothing passed to the plaintiffs at the sale in execution of their decree; and he, therefore, dismissed their suits. It was argued before the Subordinate Judge that, inasmuch as, under s. 18, Act VI of 1871, the District Judge had assigned to the three separate Munsifs in his district certain local limits, and inasmuch as this particular land was situate within the limits assigned to the Second Munsif, the Additional Munsif had no authority to attach this particular land directly, it not being within the limits of his jurisdiction; and that, in accordance with s. 286 of Act VIII of 1859, he ought to have transmitted Golam Ali's decree for execution and attachment by the Second Munsif. That the Additional Munsif having no jurisdiction to attach, he had no jurisdiction to bring this property to sale, although the attachment made under Golam Ali's decree was earlier in point of date than the attachment under which the plaintiffs claimed. The Subordinate Judge decided, that, under s. 18 of Act VI of 1871, the assignment of limits to the separate Munsifs by the District Judge is only material with respect to the institution of regular suits. We think he is wrong in that conclusion. There is nothing in s. 18 to limit the purposes for which local jurisdictions are assigned to each Munsif; and we are of opinion, that when the District Judge assigned limits to each Munsif, the jurisdiction of each Munsif was confined to the particular limits assigned to him. And as the land in question is situate within the limits assigned to the Second Munsif, we think the Additional Munsif had no jurisdiction to attach or sell this land, which was within the jurisdiction of the Second Munsif. Therefore, in our opinion, the attachment by Golam Ali was made improperly and without jurisdiction. The Subordinate Judge has also held that s. 285 of the present Procedure Code applies to this case, that is, of course, assuming that the Additional Munsif had jurisdiction

to attach and sell this property. It appears to us extremely doubtful whether s. 285 applies to immoveable property at all. The words of it—"where property not in the custody of any Court has been attached in execution, the Court which shall receive or realize such property," &c.—seem to us to be more applicable to moveable than to immoveable property. But even assuming that the section does apply to immoveable property, there is nothing in it, so far as we can see, which would absolutely destroy the validity of a sale already made, provided the proceeds of such sale were paid into the Court under whose decree the property was just attached. Now, the circumstances of this case are, that the plaintiffs' sale and Golam Ali's sale were, according to the practice which governs such matters, both conducted by the same officer of the Judge's Court, and the same date was fixed for the two sales. Probably, by accident, the sale under the plaintiffs' decree and attachment was first proceeded with; and after their sale was concluded, they took objection in the Additional Munsif's Court that the sale in execution of Golam Ali's decree should be stopped. That objection must have been taken in the presence of Golam Ali. The objection was not allowed, but the Additional Munsif made an order that the sale under Golam Ali's decree and attachment should proceed, subject to the validity of the prior sale under the plaintiffs' decree and attachment if such sale was valid, and the sale was proceeded with and Golam Ali purchased at it. But, as a matter of fact, inasmuch as these attachments were made in August and September 1877, the procedure would be governed by the old Code, and not by the present Code; for, by s. 3 of the present Code, it is provided, that nothing in the new Code contained "shall affect any proceedings after decree that may have been commenced and were still pending at that date." Now, the attachments under both these decrees were pending at the time when the new Code came into operation. They would, therefore, be governed by the practice under the old Code; and for the reasons stated by me in the case of *Chutha Punda v. Goburdhone Dass* (1), it appears that, under the old Code, it was held, that a sale

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(1) 6 C. L. R., 85.

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under a second attachment was valid, and would prevail over a sale subsequently held under a prior attachment. Under these circumstances, therefore, we are of opinion that the plaintiffs are entitled to recover in this suit; but inasmuch as the Subordinate Judge reserved for trial in a regular suit the question of title between the plaintiffs and Golam Ali, and as there are circumstances connected with the plaintiffs' purchase, as for example, the very inadequate price paid by the plaintiffs on the sale to them, which render it desirable that the question should be left open, we reserve liberty to Golam Ali to institute any suit with respect to the title to this land that he may be advised to bring against the plaintiffs. The appeal will be allowed with costs, the judgment of the Munsif being restored. This judgment will apply to No. 2466.

*Appeal allowed.*

*Before Sir Richard Gurth, Kt., Chief Justice, and Mr. Justice McDonell.*

RADHA PROSHAD WASTI AND OTHERS (PLAINTIFFS) v. ESUF  
 AND OTHERS (DEPENDANTS).\*

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 April 28.

*Ejection—Co-sharers—Trespassers—Co-sharer's Right.*

Where a tenant has been put into possession of *ijmali* property with the consent of all the co-sharers, no one or more of the co-sharers can turn the tenant out without the consent of the others; but no person has a right to intrude upon *ijmali* property against the will of the co-sharers or any of them; if he does so, he may be ejected without notice, either altogether, if all the co-sharers join in the suit, or partially, if only some wish to eject him; and the legal means by which such a partial ejection is effected, is by giving the plaintiffs possession of their shares jointly with the intruder, as explained in the case of *Hulodhur Sen v. Gooroodoss Roy* (1).

THE plaintiffs purchased at an execution-sale, in 1869, a twelve-anna share in a certain taluq, formerly belonging to one

Appeal from Appellate Decrees, Nos. 2147, 2148, and 2149 of 1879, against the decree of F. McLaughlin, Esq., Officiating Judge of Noakhali, dated the 2nd June 1879, reversing the decree of Baboo K. D. Chatterjee, Second Munsif of Soodaram, dated the 7th September 1878.

(1) 20 W. R., 126.