

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Pottenham.

MILLER, OFFICIAL ASSIGNEE AND ASSIGNEE OF THE ESTATE OF GOBIND
CHAND DUGUR, AND ANOTHER, INSOLVENTS (JUDGMENT-DEBTORS) v. 1881
MON MOHUN ROY (DECREE-HOLDER).* March 21.

Insolvency—Vesting Order—Attachment before Judgment after Vesting Order.

An attachment before judgment has no effect against the Official Assignee, who holds the property of the judgment-debtors under a vesting order of Court, made before the order for attachment was passed.

Anand Chandra Pal v. Panchilal Sarma (1) distinguished.

BABOO *Nil Mukhub Bose* and Baboo *Suligram Singh* for the appellants.

Baboo *Gurudas Banerjee* and Baboo *Rashbehary Ghose* for the respondent.

The facts of the case appear from the judgment of the Court (MORRIS and TOTTENHAM, JJ.), which was delivered by

MORRIS, J.—We think that an attachment before judgment cannot have effect against the Official Assignee who holds the property of the judgment-debtors under a vesting order of Court made before the order for attachment in question was passed. The District Judge comes to the opposite conclusion on the authority of the case of *Anand Chandra Pal v. Panchilal Sarma* (1). But that case differs in two material respects from the present case. In it the question was, whether attachment after judgment shall have priority over the vesting order, and not, as here, attachment before judgment; and *secondly*, that case was governed by the procedure prescribed in Act VIII of 1850, under which the first attaching-creditor had priority over other

* Appeal from Order, No. 823 of 1880, against the order of T. T. Allen, Esq., Judge of Rajshahye, dated the 20th August 1880, reversing the order of Baboo Gonesh Chunder Chowdhry, Subordinate Judge of that district, dated the 3rd May 1880.

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judgment-creditors. But no such priority is allowed under the present Procedure Code, Act X of 1877. It seems to us that this point, *viz.*, that attachment before judgment does not take priority over the vesting order, has been distinctly ruled in *In the matter of Gocool Doss Soonderjee, an Insolvent* (1) *Bank of Bengal v. Newton* (2), and *Gamble v. Bholagir* (3). In the last case Sir Richard Couch says distinctly, that an attachment before judgment "cannot be regarded as the inception of an execution, or as binding the goods in such a manner as to exclude the right of the Official Assignee accruing after such attachment, but before judgment and warrant for execution."

We, therefore, set aside the judgment of the District Judge and direct that the execution be stayed as against Gobind Chand Dugur and Sitab Chand Dugur with costs.

Appeal allowed.

Before Mr. Justice Pontifex and Mr. Justice Field.

ROGHOONATH MUNDUL AND ANOTHER (PLAINTIFFS) v. JUGGUT
BUNDHOO BOSE (DEFENDANT)

1881
April 7.

*Res judicata—Suit for Rent—Suit for Measurement—Civil Procedure Code
(Act X of 1877), s. 13.*

In a suit by ryots against their zemindar, praying for measurement of certain land, and for a declaration of the amount of yearly rental, it appeared that, in a previous suit for rent by the zemindar against the ryots, the ryots had alleged that the amount of rent and the extent of land had been overstated by the zemindar, but the Court decided that the ryots were bound by a jumabundi signed by them, and refused to try whether the extent of land had been overstated.

Held, that the present suit was not barred as *res judicata*.

THE facts of this case sufficiently appear from the judgments.

* Appeal from Appellate Decree, No. 244 of 1880, against the decree of Baboo Gungaohurn Sircar, Subordinate Judge of Dacca, dated the 24th of September 1879, affirming the decree of Baboo P. N. Bauerjee, First Muusif of Moonshegunge, dated the 15th August 1878.

(1) 1 Ind. Jur., N. S., 327.

(2) 12 B. L. R., App., 1

(3) 2 Bom. H. C., 146.