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APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim and Mr. Justice Ayling.*

K. P. A. D'COUTHA AND ANOTHER (DEFENDANTS), PETITIONERS,

*v.*

J. P. ASSAN KUNHU (PLAINTIFF), RESPONDENT.\*

1911.  
February 24.

*Private International Law—Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—Lex loci rei sitae.*

Where a pledge of movable property or of a debt is allowed by the law of the territory where the transaction took place, the court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it, even if the property is situate outside its jurisdiction.

*Ghamshāmlāl v. Bhānsālī*, [(1881) I.L.R., 5 Bom., 249], distinguished.

PETITION under section 115, Civil Procedure Code (Act V of 1908), praying the High Court to revise the decree of L. G. MOORE, the Acting District Judge of South Malabar, dated the 16th day of August 1909, in Appeal Suit No. 307 of 1909, presented against the decree of P. S. VELAYUDAM, the District Munsif of Tangasseri, in Original Suit No. 10 of 1908.

The facts are as follow:—

One Marian George (Joseph) and his son Variad George (Joseph) both of Tangasseri started in 1894-95 an "auction *kuri*" with 45 tickets, the value of each ticket being Rs. 50. One Kunjan Matheru of Quilon,—a town in the Native State of Travancore adjoining Tangasseri—was a subscriber to half a ticket. In June 1895, while the *kuri* was in progress, Matheru had to raise a loan of Rs. 217 and odd by hypothecating his rights in the *kuri* together with a landed property to one M. Velayudhan of Quilon to

\* Civil Revision Petition No. 790 of 1909.

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whom he also made over the receipt obtained for the amount of subscription paid by him. The *panayom* deed (Exhibit L) was registered in Quilon. Matheru having made default in paying the amount under Exhibit L, Velayudhan brought suit No. 966 of 1897-98 on the file of the Quilon Munsif and obtained a decree for sale of the mortgaged property including his (Matheru's) rights in the *kuri* which, according to the receipt, was Rs. 225. In execution of this decree Matheru's interest in the *kuri* was sold by the Quilon court and purchased by the present plaintiff for Rs. 85 and odd on 17th October, 1898. A notice was subsequently issued by the court prohibiting Matheru, the subscriber, from receiving the amount and the foremen from making payment thereof to any person except the purchaser, *i.e.*, the present plaintiff. As Matheru was a defaulting subscriber, plaintiff had to wait till the termination of the *kuri* which was in 1904-05. Both the foremen having died before the conclusion of the *kuri*, the *kuri* was finally conducted by Liza D'Coutha, the wife of the second foreman, till its termination. The plaintiff in his capacity as purchaser of Matheru's rights in the *kuri* brought suit No. 129 of 1904-05 in the Quilon court for the recovery of the amount with interest. The suit was dismissed by the Court for want of jurisdiction. He therefore brought this suit against the present defendants—the first being the second husband of Liza and the second his son by her, Liza having died during the progress of the suit (Original Suit No. 129 of 1904-5).

*P. Kundu Panicker* for petitioners.

*V. Visvanadha Sastri* for respondent.

JUDGMENT.—What happened in this case was that the respondent, a subject of the Travancore Government, to whom one Matheru, also a subject of the Travancore Government, had mortgaged his rights under a *kuri* which he held against the petitioner, an inhabitant of this presidency, enforced his mortgage and bought his judgment-debtor's interest in the *chit* in a sale held by the Travancore Court in pursuance of the mortgage-decree. It is contended that the sale by the Travancore Court of Matheru's interest in the *chit* was opposed to the principles of Private International Law and therefore void. For this position *Ghamshāmlāl v. Bhānsālī* (1) is cited as an authority. There the learned

Judges held that a court of British India had no jurisdiction to attach in execution of a decree of a British Indian court a debt which was due from a person, subject of a Native State, to the judgment-debtor, a subject of British India. That case may be distinguished from this case on the ground that here there is no question of realizing in execution of a decree, property which is situate in a foreign territory. The plaintiff in the present case instituted his suit in the very territory where, according to the petitioner himself, the property is situate, *i.e.*, in the Malabar district. No doubt SARGENT, J., bases his decision on a general proposition which, if understood in its widest application, might cover this case, *viz.*, that an attachment of a debt due from a subject of a foreign territory would "be virtually an attempt to interfere in the interest of a third person in the jural relations arising out of a cause of action over which, *ex hypothesi*, no court in British India has or even claims jurisdiction." But the observation must be understood with reference to the nature of the process provided by particular sections of the Civil Procedure Code for attachment of a debt. However that may be, we fail to understand why, if as it is conceded, there is no principle of International Law which prevents a pledge of movable property or of a debt, supposing it is allowed by the law of the territory where the transaction took place, the court of that territory should be unable to sell the property in execution of its decree so as to pass a valid title to it, if the property is situate out of its jurisdiction. We may observe that the *kuri* receipt was in Travancore at the time of its pledge. The case *In re Missouri Steamship Co.*(1), cited in "Dicey's Conflict of Laws," page 24 (2nd edition), seems to us to be clearly in support of the view we have suggested. See also *North-Western Bank v. Poynter, Son, and Macdonalds*(2). The objection taken by the petitioner to the judgment of the Lower Court fails and the petition is dismissed with costs.

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(1) (1889) 42 Ch. D. (C.A.), 321.

(2) (1895) A.C., 56.