

No doubt marriage brokerage contracts are illegal in England, but the reason of this is, that they are deemed to interfere with the free consent of the parties, which is an essential condition in the English marriage contract. But in India the consent of the parties has rarely, if ever, anything to do with the marriage contract, which is generally arranged by the parents or friends of the parties before they themselves are of an age to give a free and intelligent consent. It is opposed to English ideas of public policy that a Kulin Brahman should be paid to marry any number of Kulin girls, but so long as it is the recognised custom of the country, and is not prohibited by law, I think we should be scarcely justified in holding such marriage contracts to be illegal.

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Decision reversed.

APPELLATE CIVIL.

Before Mr. Justice Prinsep and Mr. Justice Macpherson.

KOYLASH CHUNDER SEN (CLAIMANT) PETITIONER v. KOYLASH
CHUNDER CHAKRABARTI (DECREE-HOLDER) AND MOHENDRO NATH
BOSE (JUDGMENT-DEBTOR) OPPOSITE PARTIES.*

1884
August 26,

Civil Procedure Code—Act XIV of 1882, ss. 280, 281—Attachment—Satisfaction of decrees by private sale—Purchaser—Subsequent attachment—Claim under s. 278.

A and *B* attached in execution of their decree property of *C* and his two brothers, their judgment-debtors. Subsequently *D* obtained a decree against *C* alone, and on the 11th January 1884 applied for attachment of the one-third share of *C* in the property attached by *A* and *B*, which belonged to *C* and his two brothers jointly. No order was on that date passed on the application.

On the 14th January 1884 *E* purchased from *C* his one-third share in the attached properties, and the purchase-money was, by arrangement between the brothers, applied in satisfying the debt due to *A* and *B*.

On the 28th January 1884 an order was passed on the application of the 11th January 1884 granting the attachment asked for by *D*.

And on the 28th April 1884 *E* preferred his claim to the one-third share purchased by him, and which had been since the purchase attached by *D*. The claim was disallowed on the ground that *E* had no title to the property, he having purchased whilst the property was under attachment.

* Rule No. 891 of 1884, against the order of Baboo Kristo Chunder Chatterji, First Subordinate Judge of 24-Pergunnahs, dated the 23rd of April 1884.

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Held on appeal that the Judge should have, in accordance with s. 280 of the Code of Civil Procedure, confined himself to determining whether or no the property was in the possession of *E* on his own account, at the time that *D* attached the property.

MOTHURA MOHUN CHAKRABARTI and Radanath Bose had obtained a money-decree against Mohendro Nath Bose and his two brothers, and in execution of this decree had attached certain properties belonging to the Boses.

Subsequently to this, and on 26th June 1883, one Koylash Chunder Chakrabarti obtained a decree on a promissory note against Mohendro Nath Bose.

In execution of this last decree, Koylash Chunder Chakrabarti applied, on the 11th January 1884, for the attachment of the one-third share of Mohendro Nath Bose in the properties belonging to him and his two brothers jointly.

On the 28th January 1884 an order was passed granting the attachment of the one-third share of the properties which were already attached in the suit first above mentioned.

Subsequent to the date of the application for attachment, but previous to the 28th January 1884, *viz.*, on the 14th January 1884, one Koylash Chunder Sen purchased from Mohendro Nath Bose the one-third share (which belonged to Mohendro Nath) in the properties which belonged to the three brothers, and which were under the attachment obtained by Mothura Mohun Chakrabarti and Radanath Bose; and the purchase-money was applied by Mohendro Nath Bose in paying off the debt due to Mothura Mohun Chakrabarti and Radanath Bose.

On the 23rd April Koylash Chunder Sen (the purchaser) preferred a claim before the Subordinate Judge of the 24-Pergunnahs to the one-third share so purchased by him as aforesaid, setting out in his petition his title under his purchase, and his possession since the 14th January 1884. Koylash Chunder Chakrabarti, whose decree then remained unsatisfied, opposed the claim.

The Subordinate Judge disallowed the claim on the ground that the claimant had no title, he having purchased while the property was under attachment, and that Koylash Chunder Chakrabarti

was entitled to sell the properties in execution of his decree, dated 26th June 1883, and he therefore fixed a day for the sale.

Koylash Chunder Sen then applied for and obtained a rule calling upon Mohendro Nath Bose and Koylash Chunder Chakrabarti to show cause why the order of the Subordinate Judge should not be set aside.

Mr. *Evans* (with him Baboo *Guru Das Banerjee*) in support of the rule, contended that the claim of Koylash Chunder Sen had not been properly decided upon, inasmuch as there had been no decision as to whether or no he was in possession on his own account on the date of the attachment by Koylash Chunder Chakrabarti; and submitted that sections 280, 281 of the Code should have been followed. That the purchase by Koylash Chunder Sen during the attachment of the prior decree-holder was not void as against Koylash Chunder Chakrabarti, although it was without leave of the Court, inasmuch as the claim of Koylash Chunder Chakrabarti was not enforceable under the attachment of the prior decree-holders.

Baboo *Chunder Madhub Ghose* and Baboo *Bhobani Chorun Dutt* showed cause.

The order of the Court was given by

PRINSEP, J.—Mothura Mohun Chakrabarti and another attached certain property in execution of a decree obtained by them. Koylash Chunder Chakrabarti, another decree-holder, also applied for execution of his decree, and for attachment, but it appears that no attachment was taken out by Koylash for some time. While the attachment of Mothura Mohun was in force, the judgment-debtor, without the permission of the Court especially obtained, sold their property to Koylash Chunder Sen, who is known as the claimant, and thus satisfied the decree of Mothura Mohun and Radanath; no further proceedings were taken by these decree-holders.

Koylash Chunder Chakrabarti then obtained an order for the attachment of the same property in execution of his decree; whereupon Koylash Chunder Sen preferred a claim under s. 278 of the Civil Procedure Code, alleging that he was in possession of the property under a purchase from the judgment-debtor, as just stated. The Subordinate Judge has disallowed

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the claim on the ground that the claimant had no title, as he purchased while the property was already under attachment.

It has been contended before us by Mr. Evans, that the Subordinate Judge should have confined himself to determining, within the terms of s. 280, whether the property purchased by his client was not, when it was attached by Koylash Chunder Chakrabarti, in his possession on his own account, and that his client is entitled to an adjudication on this sole ground.

It is further contended that the view taken by the Subordinate Judge of the title of the claimant is incorrect; that the claim of the decree-holder Koylash Chunder Chakrabarti was not enforceable under the attachment obtained by Mothura Mohun and Radanath, and that, therefore, the purchase, while the property was under attachment by those decree-holders, was not void under s. 285 as against Koylash Chunder Chakrabarti.

We think that under the circumstances of this case, the first contention is good. The attachment of Koylash Chunder Chakrabarti was the sole attachment then before the Court; and it was against this attachment that the objection was raised by Koylash Chunder Sen. We are not disposed in the present case to express any opinion regarding the title of Koylash Chunder Sen. But the difficulties which would arise in summarily adjudicating on this title, in the manner in which it has been dealt with by the Subordinate Judge, are apparent from the fact that the decree of Mothura Mohun and Radanath, as stated in the affidavit, which has not been contradicted by the other side, was against three persons, and the attachment was of the entire property belonging to the three jointly; whereas the attachment of Koylash Chunder Chakrabarti was directed only to one of those three judgment-debtors, and therefore it would not follow that under s. 295 Koylash Chunder Chakrabarti would be entitled necessarily to participate in the assets realized by any sale that might have taken place in execution of a decree obtained by Mothura Mohun and Radanath. We think, therefore, that the case must be returned to the Subordinate Judge in order that he may proceed in the manner prescribed by s. 280.

The petitioner is entitled to his costs.

Rule absolute.