the finding in the previous suit does not constitute *res judicata* in Subban's favour.

The lower Court has also held on the point of *res judicata* against Subban, but on an erroneous ground.

We have thus held that Subban cannot succeed on the point of *res judicata*. We have further held that, on the merits, he is bound to fail. In this view, it is unnecessary to decide the other points raised in the case. The result is that the decree of the lower Court in Original Suit No. 19 of 1924 is confirmed and the Appeal No. 173 of 1929 is dismissed with costs. It follows that Appeal No. 376 of 1924 is also dismissed, but we make no order as to costs.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Reilly and Mr. Justice Anantakrishna Ayyar.

KASARABADA VENKATACHALAPATHI RAO (RESPONDENT), APPELLANT,

v.

GADIRAJU VENKATAPPAYYA AND ANOTHER (APPELLANTS), RESPONDENTS *

1931, September 1.

Code of Civil Procedure (Act V of 1908), sec. 11—Execution of money decree—Attachment of immovable property in—Validity of—Decision as to—Purchaser of that property from judgment-debtor during pendency of proceedings raising question of validity of such attachment not party to such proceedings if and when bound by—Res judicata—Lis pendens—*Applicability of principles of.*

Where, during the pendency of proceedings between the decree-holder and the judgment-debtor raising the question of

* Letters Patent Appeal No. 349 of 1926.

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the validity of an attachment of immovable property in execution of a money decree, a third party purchases that property from the judgment-debtor, he is, in the absence of proof of fraud or collusion between the decree-holder and the judgment-debtor in connection with those proceedings, bound by the decision therein upholding the validity of the attachment, though not himself a party to the proceedings. The decision is *res judicata* against him and the principle of the doctrine of *lis pendens* will also apply to such a case.

APPEAL under clause 15 of the Letters Patent against the decree of DEVADOSS J., dated 20th August 1926 and made in Second Appeal No. 1805 of 1923 on the file of the High Court, preferred against the decree of the Court of the Subordinate Judge of Narasapur in Appeal Suit No. 12 of 1922 (Appeal Suit No. 416 of 1921, Sub-Court, Ellore) preferred against the decree of the Court of the Additional District Munsif of Narasapur in Original Suit No. 142 of 1920 (Original Suit No. 508 of 1920 on the file of the Principal District Munsif's Court of Narasapur).

V. Viyyanna for appellant.

P. Somasundaram for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by

ANANTA-KRISHNA AYYAR J.

ANANTAKRISHNA AYYAR J.—The first defendant in Original Suit No. 142 of 1920 on the file of the Additional District Munsif's Court of Narasapur is the appellant before us. He was the plaintiff in Original Suit No. 38 of 1912 on the file of the Principal District Munsif's Court, Narasapur, wherein he obtained a decree for money against M. Venkataramanayya on 30th September 1913. He applied to execute his decree in Original Suit No. 38 of 1912 by attachment and sale of certain immovable property and on the 14th March 1914 the District Munsif passed an order for attachment. In the meantime, M. Venkataramanayya, having filed an appea

against the District Munsif's decree, obtained an *ad interim* order staying execution, from the appellate Court on 13th March 1914. The interim stay order was received in the District Munsif's Court on 16th March 1914, and before the amin was informed of the order, the amin reported on the 17th March 1914 that attachment was carried out on that very date (17th March) by affixing a copy of the proclamation on the land. Subsequently the *ad interim* order was vacated on the 15th April 1914 as the judgment debtor failed to furnish security as required by the appellate Court. Venkataramanayya filed an application—Miscellaneous Petition No. 1950 of 1914—on 6th October 1914 under section 47 of the Code of Civil Procedure alleging that the attachment made on 17th March 1914 after the appellate Court ordered stay of execution was *ultra vires* and illegal, and that the application for sale made by the decree-holder on the strength of the said attachment was not maintainable, and he prayed that "the Court may cancel the attachment and the sale application made by the decree-holder". The District Munsif overruled the contentions of the decree-holder and directed that "the attachment in question be raised and all further proceedings following thereon quashed". On appeal the said order was confirmed by the Subordinate Judge. When the appeal was pending, Venkataramanayya died and his widow, Kameswaramma, was brought in as his legal representative by the appellate Court. The decree-holder in Original Suit No. 38 of 1912 preferred a civil miscellaneous second appeal to the High Court. There was a reference to the Full Bench in that civil miscellaneous second appeal. The Full Bench held:

"Where subsequent to an interim order for stay of execution made by an appellate Court without notice to the decree-holder, but before its communication to the Court of first

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instance, an order of attachment is made by the latter Court, the order of attachment is not void and ineffectual as having been made without jurisdiction, but is legally valid, (and that) the order is effective only from the time it is communicated to the first Court."

See *Venkatachalapati Rao* v. *Kameswaramma*(1). The case came on for final disposal before the referring Judges (ABDUR RAHIM and BAKEWELL JJ.), and they passed the following judgment in the case on 18th December 1917 :—

"The appeal will be allowed, the respondent's petition dismissed, and the attachment restored. The appellant will recover his costs from the respondent throughout."

On the allegation that by a sale deed, dated 27th May 1914, Gadiraju Venkatappayya and others had purchased the property in question from Venkataramanayya, they (the vendees) filed a petition on 26th August 1918 under Order XXI, rule 58, of the Code of Civil Procedure to raise the attachment on the ground that there was no valid attachment on the properties on the date of their purchase. The decree-holder contested the position with the result that the petition was dismissed on 31st October 1919. The vendees (Gadiraju people) filed Original Suit No. 142 of 1920 purporting to be under Order XXI, rule 63, of the Code for setting aside the order passed on the 31st October 1919, and they made the decree-holder in Original Suit No. 38 of 1912 the first defendant to their suit and Kameswaramma (the widow of the judgment-debtor in Original Suit No. 38 of 1912) was made the second defendant. Various contentions were raised by the parties such as, for example, whether there was a valid attachment of the properties, whether the question was *res judicata* by reason of the order passed by the High Court on 18th December 1917, whether the plaintiffs were estopped

(1) (1917) I.L.R. 41 Mad. 151 (F.B.).

from questioning the attachment, and whether the suit was barred by section 47 of the Code. Both the lower Courts having dismissed the suit, the plaintiffs (Gadiraju people) preferred a second appeal to the High Court. The learned Judge who heard the second appeal was of opinion that on the facts disclosed by the evidence in the present case there was no legal and valid attachment on the properties, that the plaintiffs who were not parties to the proceedings that came before the High Court in connection with the execution of the decree in Original Suit No. 38 of 1912 were not bound by the orders passed therein, and that it was open to the plaintiffs to show that there was no valid attachment on the property when they purchased the same on the 27th May 1914. The learned Judge came to the conclusion that, after the *ad interim* stay order passed by the appellate Court on the 13th March 1914 was received in the District Munsif's Court on the 16th March 1914, no proceedings in execution could be legally taken in the case, and that the attachment which was effected by affixing a notice on the properties on the 17th March 1914, and on the Court-house and the Collector's office on the 23rd March, was not merely irregular but illegal and void. Holding that the plaintiffs were not bound by the orders passed against their vendor—the judgment-debtor—after the judgment-debtor had sold the properties to them, the learned Judge reversed the judgments of both the lower Courts and set aside the order passed in the claim petition on the 31st October 1919.

The first defendant has preferred this letters patent appeal.

Though several points were sought to be raised before us by the learned Counsel on either side, we thought it advisable to restrict arguments in the first instance to the issue whether the main question has become

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res judicata by reason of the order passed by the High Court on the 18th December 1917, and whether the plaintiffs are bound by the said order. After hearing full arguments on that question, we have come to the conclusion that the plaintiffs are so bound, and that it is not necessary to consider the other points raised in the case.

Venkataramanayya—the judgment-debtor in Original Suit No. 38 of 1912—must be taken to have had full knowledge of all the proceedings that took place in execution of the decree in that suit, and pending the disposal of the appeal he got an *ad interim* order of stay of execution on the 13th March 1914. The further proceedings that took place in the District Munsif's Court in connection with the attachment proceedings also must have been known to him, viz., that the amin reported on the 17th March 1914 that he had in pursuance of the order passed by the District Munsif on 14th March 1914 carried out the attachment by affixing a copy of the proclamation on the lands on 17th March 1914, and that similar copies were affixed to the notice-board in the Court-house and in the Collector's office on 23rd April 1914, though the stay order passed by the appellate Court was received in the District Munsif's Court on the 16th March 1914. All this is not denied. He also knew that the said *ad interim* stay order was vacated on 15th April 1914 by the appellate Court as he had failed to furnish security as directed by that Court. It is in these circumstances that he sold the property to the Gadiraju people on 27th May 1914. What the exact effect of the proceedings that had taken place in the District Munsif's Court would be, in the circumstances, is a matter essentially relating to the execution of the decree in Original Suit No. 38 of 1912. The judgment-debtor would be bound by the decision of the executing Court as regards the effect of those

proceedings, and *prima facie* any person who claims title under the judgment-debtor after the happening of those events would also be bound by the decision of the executing Court as to the exact effect of those proceedings. The judgment-debtor could not, by transferring the property at that stage, render the decision that may be—and in ordinary circumstances would be—passed by the executing Court as regards the effect of those past events nugatory as far as the decree-holder is concerned. On the other hand, the purchaser from the judgment-debtor in such circumstances would *prima facie* take the property only subject to the disabilities it was under when in the hands of the judgment-debtor. When therefore the decree-holder sought to proceed further with his execution application which he had already filed in March 1914 and wanted to bring the property to sale in pursuance of the steps taken by him in March 1914, the executing Court had to decide whether there was a valid attachment of the property in March 1914. The circumstance that the Court was called upon to decide that question formally only after the judgment-debtor has sold the property to the plaintiffs should not alter the essential nature of the said proceedings, nor take away the jurisdiction of the Court in which the said execution proceedings were then pending to adjudicate on that question; nor is it material that the question came up for consideration on a petition filed by the judgment-debtor. It is clear from that petition (Civil Miscellaneous Petition No. 1950 of 1914) that the decree-holder in Original Suit No. 33 of 1912 had applied for sale in pursuance of the attachment effected in March 1914. The Courts had accordingly to consider what exactly would be the effect of the proceedings that had taken place in March 1914, and the High Court on 18th December 1917 passed final orders on that question in

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the following terms :—"The appeal will be allowed, the respondent's petition dismissed, and the attachment restored." The judgment-debtor's widow was a party to the said proceedings in the High Court, and she could not therefore contest the binding nature of the said decision ; but are the present plaintiffs (the vendees from the judgment-debtor under a sale-deed, dated in May 1914) in a better position? We were not referred to any reported decision directly bearing on the point. After consideration of the question we have come to the conclusion that they are not.

In our opinion, when proceedings by way of attachment of immovable property in execution of a money decree have been taken by the executing Court in an execution application filed by the decree-holder, any question that might be raised whether the proceedings taken by the Court did amount to a valid attachment or not is one that falls to be decided by the Court in the execution department; any stranger purchasing the property from the judgment-debtor in those circumstances would only take the property subject to the Court's decision as to the effect of the proceedings actually taken before his purchase. Such purchaser would be bound by the Court's decision of the question in the execution department though he was not a party to the same. To hold otherwise would be to impair the rights of the decree-holder and to enable the judgment-debtor to set at naught decisions of Courts competent to adjudicate on the rights of parties, and give the go-by to the principle of law giving finality to decisions of Courts in matters properly before them.

The present is not a case where the proceeding pending before the Court is only an execution application to attach property. Further proceedings by way of actual attachment had taken place ; and the proceedings

by way of attachment of the properties in dispute took place in a Court of competent jurisdiction; it was when those proceedings were pending that the present plaintiffs purchased those properties from the judgment-debtor; *prima facie* they must be taken to have purchased them subject to the result of those proceedings. The principle of the doctrine of *lis pendens* would apply to such a case. If for any reason the proceedings that were had relating to the properties in question prior to the plaintiffs' purchase should prove abortive and infructuous, and the decree-holder had to take entirely fresh execution proceedings after the plaintiffs' purchase, then there would be force in the respondents' contention that such fresh execution proceedings would not be binding on them unless they were made parties to the same. On the other hand, it is not open to a party to a proceeding to nullify the effect of proceedings already properly taken with reference to that property by transferring the same to strangers. As already remarked, it does not really matter whether the actual decision of the Courts as to the effect of the past proceedings is given only after the plaintiffs' purchase, if the adjudication is really with reference to matters that happened before such purchase and regarding the effect of the legal proceedings that were had prior to the same. To safeguard the purchasers' rights, the purchasers should in such circumstances get themselves impleaded as parties.

To take an analogous case, in a suit to recover money, if questions should arise whether the plaint contained sufficient allegations claiming and justifying a charge, and whether the prayer claiming a charge on certain properties was specific or not, the trial Court would have to decide those questions by its final judgment and decree, and if the Court should decide the questions in favour of the plaintiff and give him a decree for money

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charged on the properties mentioned, it would seem that the decision would be binding on a purchaser from the defendant pending suit, though he be not actually a party to the decree. He would not be allowed to show in a subsequent suit that the prior decision was wrong in the absence of fraud or collusion. The case might be different if the plaint was subsequently amended so as to claim a charge on a particular property after that property had been sold away by the defendant to a stranger.

In the case before us, it is not contended (not even suggested) that the proceedings conducted by the judgment-debtor were not conducted *bona fide* or that there was any fraud or collusion between the judgment-debtor and the decree-holder in connection with the same. On the other hand, it is admitted by one of the present plaintiffs, when examined as a witness in the present suit, that he was really conducting those proceedings on behalf of the judgment-debtor's representative—the widow. After the sale of the suit properties to the plaintiffs on 27th May 1914, it is difficult to understand why the judgment-debtor should have troubled himself, and why a petition—Civil Miscellaneous Petition No. 1950 of 1914—should have been filed on 6th October 1914 to "cancel the attachment and the sale application made by the decree-holder". As remarked by the lower appellate Court, "it seems difficult to avoid the inference that the plaintiffs, having been worsted in their attempt to get the attachment set aside by proceedings in the name of Venkataramanayya, have hit upon the expedient of claim petition and the suit to achieve the same object."

It was further argued that the attachment made in March 1914 should be taken to have been completed only on 23rd March 1914, when copies of the

proclamation were affixed in the Court-house and in the Collector's Office in accordance with the provisions of Order 21, rule 54, of the Code of Civil Procedure and, as the stay order was perused by the District Munsif on 17th March 1914, the subsequent acts done on 23rd March 1914 should be taken to be *ultra vires*, and that there was no complete and valid attachment in the eye of the law; and the decision of the Full Bench in *Sinnappan* v. *Arunachalam Pillai*(1) was relied on. Assuming the argument to be correct, that does not take away the binding nature of the decision passed by this Court on 18th December 1917 that the attachment was valid and restoring the attachment.

Orders passed in the course of execution proceedings adjudicating on the rights of the parties are *res judicata* and could not be called in question by the parties or their representatives. When once the said orders become final, that effect could not be sought to be avoided by making allegations that the previous decisions were wrong on the merits because full facts were not placed before the Court or that all available evidence was not let in on the former occasion; see *Ram Kirpal* v. *Rup Kuari*(2); *Mungul Pershad Dichit* v. *Grija Kant Lahiri*(3) and *Raja of Ramnad* v. *Velusami Tevar*(4).

It therefore seems to us that the present plaintiffs are bound by the orders passed by the High Court restoring the attachment.

It is a matter for satisfaction that we have been able to reach this result, since there is no doubt that the conduct of the judgment-debtor in getting an interim stay from the appellate Court (which was finally

(1) (1919) I.L.R. 42 Mad. 844 (F.B.). (2) (1883) I.L.R. 6 All. 269 (P.C.).
(3) (1881) I.L.R. 8 Calc. 51 (P.C.). (4) (1920) L.R. 48 I A. 45.

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dismissed as no security was furnished) and then transferring the properties to the plaintiffs—who had (there is no doubt) notice of all the proceedings—thus defeating the decree-holder would surely be reprehensible from the moral point of view.

We accordingly hold that the present plaintiffs are bound by the final orders passed in execution proceedings in Original Suit No. 38 of 1912 in which it was held by the High Court in effect that there was a valid attachment in March 1914 of the properties in dispute, and that the said "attachment should be restored". The plaintiffs' purchase from the judgment-debtor in May 1914 should be taken to be subject to that attachment. Allowing this letters patent appeal, we restore the decision of the lower appellate Court with costs here and in second appeal.

A.S.V.