

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Mahmood.*

THE DELHI AND LONDON BANK, LIMITED (PLAINTIFF) v. RAM  
NARAIN (DEFENDANT)\*.

1887  
April 1.

*Civil Procedure Code, ss. 492, 493—Temporary injunction restraining alienation of property in suit—Mortgage of such property not void—Act IX of 1872 (Contract Act) s. 23.*

The effect of a temporary injunction granted under s. 492 (b) of the Civil Procedure Code is not to make a subsequent mortgage of the property in question illegal and void, within the meaning of s. 23 of the Contract Act (IX of 1872). Such a penalty must not be read into s. 493, which provides otherwise for the breach of an injunction granted under s. 492.

In a suit for a money claim brought by the respondent Ram Narain, against two persons named, respectively, Ram Sarup and Piare Lal, an injunction under s. 492 (b) of the Civil Procedure Code was, on the application of the plaintiff, granted by the Court in the following terms :—

“Whereas it has, in this suit, been proved to the satisfaction of the Court that, as regards the property mentioned below, there is an apprehension of your transferring it to some person, or of your causing damage to the disputed property by cutting down trees or pulling down buildings, you are hereby ordered to refrain from the act complained of, without fail.”

The property referred to in this order consisted of two bungalows. The order was dated the 12th June, 1884, and a copy of it was served on both defendants on the 14th June.

On the 27th June, 1884, while the suit was still pending, the defendants executed a deed in which they hypothecated both bungalows to the Delhi and London Bank, Limited. In this deed it was stated that the bungalows had “been attached, together with other property and villages, in suit No. 58 instituted in the Court of the Subordinate Judge of Bareilly by Pandit Ram Narain, plaintiff, against us, the declarants, for Rs. 3,721. But the whole of this property will be caused to be released and freed from attachment.”

On the 7th August, 1884, Ram Narain obtained a money decree against Ram Sarup and Piare Lal, and, on the 12th August,

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\* First Appeal, No. 72 of 1886, from a decree of Maulvi Muhammad Abdul Qayum Khan, Subordinate Judge of Bareilly, dated the 23rd February, 1886.

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attached the bungalows and caused them to be advertized for sale in execution of the decree.

On the 19th January, 1885, the Delhi and London Bank obtained a decree upon their deed of the 27th June, 1884, and, on the 25th March, 1885, attached the same two bungalows in execution of their decree. On the 23rd and 24th July, the bungalows were sold by auction for Rs. 13,005.

An application was then made in the execution department by the Delhi and London Bank for payment of the whole amount of the sale proceeds. An objection was made by Ram Narain, on the ground that the hypothecation of the 27th June, 1884, in favour of the Bank was, by reason of the injunction issued on the 12th June, 1884, invalid, and that consequently the Bank were not entitled to recover any part of the proceeds of the auction-sale. On the 13th November, 1885, the Court passed an order allowing the objection.

The Bank then brought the present suit against Ram Narain, praying for cancellation of the order of the 13th November, 1885, and for recovery of the whole amount of the proceeds of the auction-sale of the 23rd and 24th July, 1885.

The Court of first instance (Subordinate Judge of Bareilly) dismissed the claim, holding that the effect of the injunction was to make any transfer of the property to which it referred illegal and void, and that the plaintiff Bank had therefore derived no title to the property under their mortgage-deed and decree. The plaintiff Bank appealed to the High Court.

Mr. G. T. *Spankie* and Mr. W. M. *Colvin*, for the appellant.

Babu *Ratan Chand*, for the respondent.

EDGE, C. J.—This was an action which the plaintiffs brought against the defendant to try the question as to who was entitled to the proceeds of an execution. It appears that Ram Sarup and Piare Lal, whom I shall call the debtors, owed money to the defendant. On the 7th June, 1884, the defendant brought his suit against the debtors to recover that money, and on the same day applied for an injunction against the debtors under s. 492 of the Code of Civil Procedure, clause (b). On the 12th June, 1884, the

Court granted the injunction, which is in the following words :  
 “Whereas it has, in this suit, been proved to the satisfaction of this Court that as regards the property mentioned below there is an apprehension of your transferring it to some person or of your causing damage to the disputed property by cutting down trees or pulling down buildings, you are hereby ordered to refrain from the act complained of without fail.” The property consisted of, amongst other things, two bungalows, the dealings with which are the subject-matter of this suit. On the 27th June, 1884, the debtors executed a mortgage of the same property to the plaintiffs for a debt due. On the 7th August, 1884, the defendant obtained a money-decree in his suit against the debtors. On the 19th January, 1885, the plaintiffs obtained a decree on their mortgage for enforcement of their lien by sale, and on the 25th March, 1885, attached the property in question. I should have said that on the 12th August, 1884, the defendant had attached the same property under his money-decree of the 7th August, 1884. The plaintiffs and defendant respectively claimed execution. The property was sold and realised, after the payment of expenses, the money in dispute. It is contended that the effect of s. 492 of the Code of Civil Procedure was in this case to take away from the debtors the power to transfer the title of the property to the plaintiffs, or, in fact, to any one. In other words, that the mortgage executed by the debtors on the 27th June, 1884, was void by reason of the injunction of the 12th June, 1884. For that proposition no authority is cited. It is contended that s. 23 of the Contract Act applies, on the ground that the object of the mortgage was of such a nature that, if permitted, it would defeat a provision of law, that is, the injunction. It appears to me that s. 23 of the Contract Act does not apply to this case. It might apply if there were any provision of the law by which a mortgage under these circumstances would be void or illegal, or if it were forbidden by law that a particular creditor should obtain security for his debt. It is said that one of the penalties which result from an infringement of an injunction granted under s. 492 of the Code of Civil Procedure, is that any dealing with the property, the subject of such an injunction, contrary to the terms of the injunction, is illegal and void. For this proposition no authority has been cited. What I do find

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is, that s. 493 provides a penalty for the breach of an injunction granted under s. 492, and the penalty there provided is not the one contended for. I fail to see why we should read into the section words which are not found there, in order to provide another penalty. The omission of any such words in s. 492 or s. 493 is all the more marked when we turn to ss. 274 and 276 of the same Code. Those sections relate to attachment of property, and even in the case of attachment of property under s. 274, a subsequent private alienation of the property is not rendered void, even as against claims enforceable under the attachment, unless the attachment has been made by actual seizure or by written order duly intimated or made known. In conclusion, I can find neither in the Codes, case law, nor text-books, any authority to support the contention of the defendant in this action. Under these circumstances the appeal must be allowed with costs, and the decree of the lower Court must be set aside; the relief prayed for in paras. A, B, C, D, of the plaint must be decreed with costs here and below. Mr. Colvin, relying on the strength of his point, has not raised the question as to whether or not the injunction was legally made. We do not consider it necessary to enter into that question.

MAHMOOD, J.—I agree.

*Appeal allowed.*

1887  
April 7.

*Before Mr. Justice Straight and Mr. Justice Mahmood.*

HULAS RAI AND ANOTHER (PLAINIFFS) v. PARTHI SINGH AND ANOTHER  
(DEFENDANTS)\*.

*Mortgage—Decree for foreclosure—Order allowing mortgagor to deposit in Court amount due after date fixed—Ministerial act—Order not appealable—Civil Procedure Code, ss. 244, 588—Act IV of 1882 (Transfer of Property Act), s. 87.*

S. 244 of the Civil Procedure Code contemplates that there must be some question in controversy and conflict in execution which has been brought to a final determination and conclusion so as to be binding upon the parties to the proceedings, and which must relate in terms to the execution, discharge or satisfaction of the decree.

A judgment-debtor under a decree for foreclosure made an application to the Court two days after the expiry of the time prescribed by the decree for payment of the amount due thereunder, in which she alleged that, by reason of

\* First Appeal, No. 28 of 1887, from an order of Maulvi Abdul Basit, Subordinate Judge of Mainpuri, dated the 25th January, 1887.