

sister-in-law sold the property with all its rights and interests to the same two persons, in 1858 when Sheogobind and Lalbehari who were in proprietary possession of the whole of Sukurdeha, including the share in suit, were convicted of rebellion and the village was confiscated by the Government and was granted to the defendants, on all these occasions Badri Nath stood by and took no action whatever to assert his claims. He did not sue for possession when his sister-in-law died in 1874, and he did not bring this suit until the 6th March 1886, that is, only two or three days before the expiration of a period of twelve years from the death of Gangan Kuari and of about twenty-eight years, thirty-one years and thirty-two years respectively from the confiscation and grant, from the sale and from the decree above referred to. Apparently for thirty years or more he had no intention of preferring a claim for the share, and probably he was induced by some speculation or other to institute a suit when the period of twelve years from his sister-in-law's death was just about to close.

I would allow the appeal, reverse the decrees of the lower Courts and dismiss the suit with all costs.

STRAIGHT, J.—I am of the same opinion.

Appeal allowed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

HARGU LAL SINGH (DEFENDANT) v. MUHAMMAD RAZA KHAN AND ANOTHER
(PLAINTIFFS).*

1890.
December 9.

Execution of decree—Attachment—Incorrect description of property sought to be attached—Subsequent purchase of same property under a decree for pre-emption—Civil Procedure Code, s. 274.

In execution of a simple money decree against the holders of a *muafi* interest in a certain village, who did not possess any zamindari interest in that village, an attachment was obtained by the decree-holder in 1884 of "an eight biswas zamindari share of mauza D," and under that attachment a sale took place in January 1886. Meanwhile, in December 1885, a decree for pre-emption in respect of a sale by the judgment-debtors in 1881 of their *muafi* interests in the village, was decreed in favour of persons who were not parties to the litigation in which the attachment of 1884 was

* First Appeal No. 194 of 1888 from a decree of Maulvi Zain-ul-Abdin, Subordinate Judge of Moradabad, dated the 26th June 1888.

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effected. The plaintiffs (who were in possession) sued for a declaration of their right to the *muafi* interests as against the auction-purchaser under the sale of January 1886.

Held that the attachment in 1884 was not a good attachment of the *muafi* interests of the judgment-debtors, and the auction-purchaser could not be held to have purchased those *muafi* interests, and the title of the plaintiffs under their pre-emptive decree of December 1885 must prevail.

THIS was a suit for a declaration of the plaintiffs' right to certain property under a decree for pre-emption passed on the 21st December 1885, as against the defendant, who had obtained "formal possession" only of the same property under a sale in execution of a simple money decree, the sale having taken place on the 20th January 1886. The plaintiffs were in actual possession. The material facts of the case are stated in the judgment of Straight, J.

Babu Jogindro Nath Chandlari, for the appellant.

Mr. Abdul Majid and Maulvi Zahur Husain, for the respondents.

STRAIGHT, J.—I am of opinion that the Subordinate Judge has rightly decided this suit in favour of the plaintiffs. The question between them and the defendant is a very simple one, and appears from the following short facts which I may conveniently state.

On the 18th December 1860, one Imdad Husain obtained a money decree for a small sum against Bedar Shah. Bedar Shah was the father of Mahmud Shah, Firoz Shah, Timur Shah and Maksud Shah. Imdad Hussain sold his decree to two persons named Behari Lal and Makund Ram. On the 5th June 1881, Mahmud Shah and his two brothers executed a sale-deed of their *muafi* interests in mauza Dhak Shahid, pargana Sambhal, in favour of one Mozaffar Ali for a sum of Rs. 6,500. The present plaintiffs, such sale having come to their knowledge, instituted a pre-emption suit, and upon the 21st December 1885, obtained a decree upon payment to the vendee-defendant of the sum of Rs. 5,580. Even if the title of the plaintiffs to the *muafi* interests of Mahmud Shah and two of his brothers therefore cannot be thrown back to an earlier date, they became by their pre-emptive decree the proprietors of that interest from the 21st December 1885. On the 20th January

1886, Makund Ram and Behari Lal brought to sale the interests of Mahmud Shah and his two brothers in mauza Dhak Shahid, and the defendant purchased for a sum of Rs. 225. Upon the strength of that purchase he invoked the aid of the Civil Court executing that decree to give him possession, and formal possession was given him. In addition to that he obtained from the Revenue Court an order entering his name in lieu of Mahmud Shah and his two brothers in the revenue records. This is the cause of action for the institution of the present suit, and it is admitted that the plaintiffs are in actual possession and enjoyment under the title acquired by them upon the strength of their pre-emption decree. At first sight, upon the statement of the facts, it would appear to be conclusively clear that the plaintiffs have a title, dated not later, at any rate, than the 21st December 1885, to the whole of the property of Mahmud Shah and his two brothers. That title must have a superior claim over and above that of the defendant, which was not acquired until the 20th January 1886. But Mr. *Jogindro Nath*, on behalf of the defendant-appellant, has ingeniously and ably argued that as an attachment was put upon the interest of Mahmud Shah and his two brothers at the instance of Makund Ram and Behari Lal on the 11th May 1884, and as the execution sale of the 20th January 1886, took place under that attachment, his title, so far as resisting the title of the plaintiffs is concerned, relates back to the date of his attachment order, or at least that the attachment of the 11th May 1884, was a prohibition to the sale by the judgment-debtors of their interests to Mozaffar Ali upon the 5th June 1884.

The question in my judgment before us, and before the learned Subordinate Judge below, therefore, fines down to this, was a good attachment of the *muafi* rights of Mahmud Shah and his two brothers put upon those rights on the 11th May 1884? I have asked Mr. *Jogindro Nath* to point out to me any other document beyond that numbered 21 and to be found at page 11 of the respondents' book, bearing upon the attachment. He was unable to do so, and indeed, with the exception of one other that we ourselves have discovered, and which is to found at page 14 of the same

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book, there is no other documentary evidence in this record to throw light upon the circumstances and the character of the attachment. There is, however, the oral evidence of a witness Bhola Nath, who was pleader for the decree-holders, who effected that attachment. He informs us to a certain extent as to what happened at the time it was made, and what he says does not help the defendant. Now taking the document at page 14, which bears date the 22nd April 1884, that appears to be an attachment issued in pursuance of s. 273 (s. 274 it ought to be) of the Civil Procedure Code, and the attached property is there described as the 8 biswas "*zamindári*" share of mauza Dhak Shahid, bearing a *jama* of Rs. 60, the property of the defendants. Document No. 21, at page 11, is a list of the property of Mahmud Shah and others, judgment-debtors, to be attached in the case of execution of decree of Behari Lal and Makund Ram and others, plaintiffs, against Mahmud Shah and others, judgment-debtors, situate in mauza Dhak Shahid, pargana Shambhal, dated the 11th May 1884. This, although professing to be a list, is in reality a document showing that an 8 biswas "*zamindári*" in mauza Dhak Shahid, bearing a revenue of Rs. 60 and belonging to the defendants, was attached, and that document is signed by the *amín*, who did effect the attachment, and by the Munsif of the Court who had ordered that attachment to take place. It is perfectly clear to my mind that in both these documents, *viz.*, the formal order under s. 274 of the Civil Procedure Code, and the report of what had been attached, what the decree-holder was attaching and had attached was an 8 biswa "*zamindári*" share of his judgment-debtors in the particular mauza, which *zamindári* share was stated as liable to a revenue of Rs. 60 a year.

Mr. *Jogindro Nath* for the appellant, very frankly and rightly has admitted that Mahmud Shah and his brothers had no *zamindári* interests in Dhak Shahid at the time of this attachment, but that the interest they had was a *muáfídár's*, which would necessarily be of very considerably greater value than a mere *zamindári* interest, such as that which was in fact attached.

Not only have we the contents of these two documents, but again reverting to the deposition of Bhola Nath, who was the pleader acting on behalf of the decree-holders, Makuund Ram and Behari Lal, he said—

“It did not appear to me from the *khewat* whether the property was *zamindári* or *muáfi*, and therefore I described it to be *zamindári* property in the application. The *khewat* did not show that it was *zamindári*. I had stated it to be *zamindári* according to my judgment. With reference to the word *málguzári* mentioned in the 12th column of the copy of the *khewat*, I had considered it to be *zamindári*. I don't remember whether the Collector inquired of the Munsif that that property did not stand in the names of the judgment-debtors, but in that of Mozaffar Ali Khan. I don't remember whether any objection was taken. This case was transferred to the Collector and the sale was made by him.” To the plaintiffs' pleader:—“I got the property of the defendants attached considering it to be *zamindári*. I considered that property to be *zamindári*, and got the *zamindári* attached.”

There can be no question that what was intended to be attached was the *zamindári* interest of the judgment-debtors, and what was attached was that *zamindári* interest. For the purposes of disposing of this appeal I do not think it necessary to go further and to deal at length with what was in fact sold, though the proclamation of sale and the actual sale certificate, which is the document of title, leave no doubt in my mind that what was actually sold was the *zamindári* interest of Mahmud Shah and his two brothers, and what the certificate of sale gave a title to was a *zamindári* interest.

The contention for the appellant comes to this, that where an attachment has been made of a judgment-debtor's *zamindári* interest and a sale has taken place in pursuance of that attachment and a certificate of sale granted for the *zamindári* interest, though the judgment-debtors possess no *zamindári* interest but a *muáfi* interest, yet the auction purchaser must be taken to have purchased a *muáfi* interest. It would be a very strong thing to hold any such

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view. It must be remembered that we are dealing with parties as plaintiffs, who had no share in the litigation under which the attachment was put upon the interests of the judgment-debtors in that matter. They are third parties wholly outside that litigation, who obtained a clean title upon the 1st December 1885, unless the attachment of 11th May 1884, can be maintained. I think that they are entitled to put the defendant upon strict proof that the attachment under which the sale to him took place was a good attachment in law, and that there was no such misdescription in it of the interests of the judgment-debtors as would mislead either purchasers at the auction to bid or persons interested in the property to refrain from coming forward and making any claim. For these reasons I think that the Subordinate Judge was right. I dismiss the appeal with costs.

TYRRELL, J.—I concur.

Appeal dismissed.

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December 18.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

KALLU RAI AND OTHERS (JUDGMENT-DEBTORS) v. FAHIMAN AND OTHERS
(DECREE-HOLDERS).*

Civil Procedure Code, s. 206—Application to bring decree into conformity with the judgment—Execution of decree—Limitation—Act XV of 1877, sch. ii, art. 179 (4)—“Step in aid of execution.”

The granting of an application under s. 206 of the Civil Procedure Code to bring a decree into conformity with the judgment does not form the starting point of a fresh period of limitation in favour of the decree-holder; nor is such an application a “step in aid of execution” within the meaning of art. 179, schedule ii, of the Limitation Act (XV of 1877).

Kishen Sahai v. The Collector of Allahabad (1) distinguished.

THE facts of this case are sufficiently stated in the judgment of Straight, J.

Munshi Madho Prasad, for the appellants.

Mr. *Abdul Raof* and Mr. *Abdul Majid*, for the respondents.

* First Appeal No. 33 of 1889 from an order of Babu Lalla Prasad, Subordinate Judge of Ghazipur, dated the 26th November 1888.