

does not appear open to objection. The appeal fails and is dismissed. This decision affects appeals Nos. 497, 498, and 499. The decree in the suit will be in the terms proposed by my learned colleague.

1885

JAI RAM
v.
MAHABIR
RAI, &C.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

RAI BALKISHEN (DECREE-HOLDER) v. RAI SITA RAM AND ANOTHER
(JUDGMENT-DEBTOR). *

1885

March 30.

Execution of decree—Joint ancestral property—Execution against deceased son's interest in hands of the father—Death of judgment-debtor after attachment and before sale—Charge in favour of decree-holder—Civil Procedure Code, s. 274—Copy of order for attachment not fixed up in Collector's office.

In execution of a money decree, an order was issued under s. 274 of the Civil Procedure Code, for the attachment of property which was the joint ancestral estate of the judgment-debtor and his father. A copy of this order was not fixed up in the office of the Collector of the district in which the land was situate, as required by s. 274. The sale was ordered and a day fixed for sale, but in consequence of postponements made at the judgment-debtor's request, no sale took place. In the meantime the judgment-debtor died, and the decree-holder applied for execution against the father as representative of the judgment-debtor, whose interest had survived to him.

Held that the decree-holder had, by the proceedings taken in execution during the son's lifetime, obtained rights over his interest which could not be defeated by his death before sale. *Suraj Bansi Koer v. Sheo Persad Singh* (1) followed.

Held also that, though the defect in the manner in which the attachment was made might render the attachment ineffectual for the purpose of voiding alienations made, the attachment was effectual against the judgment-debtor, and the defect did not afford a ground for declaring the execution proceedings ineffectual.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Oldfield, J.

Mr. T. Conlan and Pandit Bishambar Nath, for the appellant.

Mr. W. M. Colvin, Mr. N. L. Paliologus, Pandit Nand Lal and Munshi Kashi Prasad, for the respondents.

OLDFIELD, J.—The appellant, Rai Balkishen, held a money-decree against Lachmi Chand, son of the respondent Rai Sita Ram. He took out execution in Lachmi Chand's lifetime against him for attachment and sale of a revenue-paying estate, which

* First Appeal No 118 of 1884, from an order of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 17th May, 1884.

(1) I. L. R., 5 Calc. 148 ; L. R., 6 Ind. Ap 108.

1885

RAI
BALKISHEN
v.
RAI SITA
RAM.

was the joint ancestral property of father and son. An order for attachment under s. 274, Civil Procedure Code, was issued by the Court, but there was this defect in the manner in which the attachment was made, that the copy of the order was not fixed up in the office of the Collector of the district in which the land was situate, as required by s. 274. The sale was ordered, a day was fixed for sale, but in consequence of adjournments made at the request of Lachmi Chand, no sale took place. In the meantime Lachmi Chand, the judgment-debtor, died on the 16th April, 1881, and on the 24th February, 1883, the decree-holder applied for execution against Rai Sita Ram as the representative of the judgment-debtor, as survivor of the judgment-debtor's family, the interest of the son having survived to him. The execution has been disallowed, and the decree-holder appeals. The question raised is whether the interest which the son had in the joint ancestral property, can be reached by the decree-holder in the hands of the father, and it is a question which seems covered by the authority of the Privy Council ruling in *Suraj Bansi Koer v. Sheo Persad Singh* (1). The decree-holder holds only a money decree against Lachmi Chand, and his interest could not be reached by the decree-holder in the hands of the debtor's father, to whom his son's interest has survived; but the question is, whether the proceedings taken in execution in the son's lifetime constitute a valid charge on the property which cannot be defeated by his death. In the case of *Suraj Bansi Koer* it was held that when property has been attached and proceedings towards sale have been taken in the lifetime of the judgment-debtor by the creditor, a valid charge is created in favour of the creditor, which will not be defeated by the death of the judgment-debtor before sale. I think such has been the case here. An attachment of the judgment-debtor's interest was made by order under s. 274, Civil Procedure Code, prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise, and the order was proclaimed as required in the second paragraph of the section. This attachment was acted on and accepted by the judgment-debtors as a valid attachment, and the sale was ordered, and

(1) 1. L. R., 5 Calc. 148; L. R., 6 Ind. Ap. 108.

would have taken place in the judgment-debtor's lifetime but for postponements made at his request, when, also at his request, the attachment continued in force.

I consider that the creditors had by these proceedings obtained rights over the judgment-debtor's interest which cannot be defeated by his death, and that the defect in the manner in which the attachment was made—the copy of the order not having been fixed up in the office of the Collector of the district in which the land is situate—will not make any difference. The defect might render the attachment ineffectual for the purpose of voiding alienations made, but the property was attached, and the attachment was expressly continued in force at the request of the judgment-debtor, who obtained repeated postponements of the sale; it was effectual against him, and the respondent cannot take hold of this defect so as to have the execution proceedings declared ineffectual.

I would decree the appeal, and set aside the order refusing execution, and remand the case for disposal. Costs to be costs in the cause.

MAHMOOD, J.—I concur.

Cause remanded.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

SITA RAM (OBJECTOR) v. BHAGWAN DAS (DECREE-HOLDER).*

*Civil Procedure Code, s. 244—Question for Court executing decree—Party to suit
—Representative.*

Where, certain property having been attached in execution of a decree, the representative of the judgment-debtor objected that the property had been acquired by himself and not inherited from the judgment-debtor, and was therefore not liable in execution,—held that the question was one which must be decided in the execution department under s 244 of the Civil Procedure Code. *Ram Ghulam v. Hazaru Koer* (1) referred to.

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

Mr. W. M. Colwin, Mr. N. L. Paliologus, Lala Jokhu Lal, Pandit Nand Lal, and Munshi Kashi Prasad, for the appellant.

The Senior Government Pleader (Lala Juala Prasad), for the respondent.

* First Appeal No. 128 of 1884, from an order of Babu Kashi Nath Biswas, Subordinate Judge of Benares, dated the 17th May, 1885.

(1) *Ante*, p. 547.

1885

RAI
BAKRISHEN
v.
RAI SITA
RAM.

1885

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