

1896

April 29.

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

BALKISHEN (DEFENDANT) v. NARAIN DAS, AND OTHERS (PLAINTIFFS).\*

*Execution of decree Civil Procedure Code, section 285—Attachment of the same property by two courts of different grades.*

The operation of section 285 of the Code of Civil Procedure is not affected by the fact that prior to the attachment made by the Court of higher grade proceedings subsequent to attachment may have taken place in the Court of lower grade in execution of the decree of that Court. *Badri Prasad v. Saran Lal* (1), *Aghore Nath v. Shama Sundari* (2) and *Muttukaruppan Chetti v. Mutturamalinga Chetti* (3) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Gobind Prasad*, for the appellant.

Mr. *Abdul Raof*, for the respondents.

EDGE, C. J., and BANERJI, J.—The plaintiffs in this suit were purchasers at a sale held in execution of the decree of a Munsif. The defendant is the purchaser of the same property at a sale held in execution of a decree against the same judgment-debtor passed by the Court of a Subordinate Judge. The attachment in execution of the decree of the Munsif took place on the 7th of April 1892. We do not know the precise date of the proclamation of sale in execution of the decree of the Munsif, but it must have been before the end of June 1892, as by an error the 31st of June was fixed as the date for sale. When it was discovered that the date was an impossible one, the 11th of July was fixed for the sale in execution of the decree of the Munsif, and the sale took place on that date. At that sale the plaintiffs purchased. The property was attached in execution of the decree of the Subordinate Judge on the 3rd of July 1892, and it was sold in execution of that decree on the 28th of August 1892, and was at that sale purchased by the defendant. The plaintiffs brought this suit for possession of the property in question. The first Court dismissed the claim. The District Judge in appeal granted the plaintiffs a decree for

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Second appeal No. 158 of 1894, from a decree of H. B. Finlay, Esq., District Judge of Sháhjahánpur, dated the 18th January 1894, reversing a decree of Maulvi Muhammad Shafi, Munsif of Tilhar, dated the 30th June 1893.

(1) I. L. R., 4 All., 359.

(2) I. L. R., 5 All., 615.

(3) I. L. R., 7 Mad., 47.

possession, holding that there was no fraud in the case, and that it was not shown that at the date of the sale the Munsif was aware that the property in question was under attachment in execution of the decree of the Subordinate Judge. The District Judge considered that under those circumstances the decisions in *Budri Prasad v Saran Lal* (1) and *Aghore Nath v. Shama Sundari* (2) did not apply, and followed the decision in *Bykant Nath Shaha v. Rajendro Narain Rai* (3). The defendant appealed.

On behalf of the respondents it has been contended that section 285 of the Code of Civil Procedure does not apply when any proceeding subsequent to attachment has taken place in execution of a decree, and in support of that contention the decisions in *Patel Naranji Morarji v. Haridas Navalram* (4) *Turmukhlal Harkisanrai v. Kalyandas Khushal* (5) and *Bykant Nath Shaha v. Rajendro Narain Rai* (3) have been referred to.

It appears to us that all that is necessary to be done in order to ascertain under what circumstances s. 285 of the Code of Civil Procedure applies is to read the section. There is nothing in the section to say that it shall not apply if after attachment by two Courts the property happens to be sold by the inferior Court, or if before attachment by the Court of higher grade proclamation of sale in execution of the decree of the Court of the lower grade has been issued. For present purposes all that is material to see is—was the property attached by the Court of the Subordinate Judge before it was sold by the Court of the Munsif? The section applies at once in its full force the moment the same property is attached by more Courts than one. The section does not suggest that it is to be construed according to convenience, and that a sale which is in contravention of the section is to be held good because it is convenient not to interfere with it. It is quite plain that under the section, where the same property is attached in execution of the decrees of an inferior Court and of a Court of a higher grade, the Court of the higher grade is the only Court which is

1896

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 BALKISHEN  
 v.  
 NARAIN DAS

(1) I. L. R. 4 All., 359.

(3) I. L. R., 12 Calc., 333.

(2) I. L. R. 5 All., 615.

(4) I. L. R., 18 Bom., 458.

(5) I. L. R., 19 Bom. 127.

1896

BALKISHEN  
v.  
NARAIN DAS.

allowed jurisdiction to sell the property or to receive it, and that it is that Court which must determine any claim and any objection to the attachment of either Court.

So far as the decisions in I. L. R., 4 All., 359 ; I. L. R. 5 All., 615, and I. L. R. 7 Mad., 47 construe the section as laying down the rule that in cases of attachment by Courts of different grades it is the Court of the higher grade or highest grade which has got the sole jurisdiction to sell or receive or realize the property, we agree with them.

We allow the appeal with costs, and setting aside the decree of the lower appellate Court we restore and affirm the decree of the first Court.

*Appeal decreed.*

## REVISIONAL CRIMINAL.

1896

*April 29.*

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

QUEEN-EMPRESS v RAM DEI AND OTHERS.

*Act No. XLV of 1860 (Indian Penal Code), sections 366, 368—Criminal Procedure Code, section 180—Offences committed in different districts in the course of the same transaction—Commitment where to be made.*

Ram Dei, Chajju, Piru and Kamar were committed by the Joint Magistrate of Muzaffarnagar to the Court of the Sessions Judge of Saharanpur. Upon the case which was before the Joint Magistrate it appeared that Ram Dei had committed the offence punishable under section 366 of the Indian Penal Code in the district of Bijnor, and possibly the other three persons had committed the offence punishable under section 368 of the Indian Penal Code in the district of Muzaffarnagar ; Chajju and Piru also possibly having committed the offence punishable under that section in Bijnor.

Under the above circumstances the High Court, maintaining the order of commitment made by the Joint Magistrate, directed the case to be transferred for trial to the Court for the trial of Sessions cases arising in the Bijnor district, namely, that of the Sessions Judge of Moradabad. *Reg. v. Samia Kaundan* (1) and *Queen-Empress v. Surja* (2) not followed. *Queen-Empress v. James Ingle* (3) and *Queen-Empress v. Abbi Reddi* (4) referred to. *Queen-Empress v. Thaku* (5) followed.

THIS was a reference made by the Sessions Judge of Saharanpur under section 438 of the Code of Criminal Procedure.

(1) I. L. R. 1 Mad., 173.

(3) I. L. R. 16 Bom., 200.

(2) Weekly Notes 1883, p. 164.

(4) I. L. R. 17 Mad., 402.

(5) I. L. R. 8 Bom., 312.