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As the application in question was admittedly made after the expiry of the period prescribed by article 165, it was beyond time, and should have been rejected. This ground alone is sufficient for the disposal of the appeal.

But we are also of opinion that on the merits the appeal must succeed. As the respondents were parties to the pre-emption suit in which Har Din Singh obtained his decree, and as that decree directed delivery of possession to be made to Har Din Singh, the respondents are precluded from contesting his right to obtain possession in execution of that decree. The suit by Har Din Singh was for pre-emption of the sale, which he alleged had become an absolute sale by reason of the non-payment of the mortgage-money within the time fixed in the decree for foreclosure obtained by Sheo Narain Singh. If the respondents wished to contend that the conditional sale had not become absolute, they ought to have raised that contention in the pre-emption suit, and it is too late for them now to urge that the conditional sale has not become absolute. Such a contention would have gone to the whole root of the cause of action in the pre-emption suit. Having allowed a decree for possession to be passed, it is no longer open to them to question the right of the decree-holder to obtain possession by virtue of that decree. Upon this ground also the application of the respondent ought to have been dismissed. The result is that we allow the appeal with costs, set aside the decree and order of the lower appellate Court with costs, and restore that of the Court of first instance.

Appeal decreed.

Before Mr. Justice Blair and Mr. Justice Banerji.

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March 3.

LACHMI DAYAL (DEFENDANT) *v.* HAR DANNI LAL AND ANOTHER (PLAINTIFFS) AND SHIB DAYAL AND ANOTHER (DEFENDANTS).*

Execution of decree—Rights of attaching creditor—Suit by one attaching creditor for declaration that property cannot be attached by another creditor on the ground that the second creditor's decree was bad in law—Cause of action.

The plaintiffs, as judgment-creditors who had attached under a decree for money certain immovable property of their judgment-debtors, sued another

* Second Appeal No. 732 of 1902 from a decree of L. Stuart, Esq., District Judge of Fatehgarh, dated the 4th of September 1902, reversing a decree of Maulvi Syed Muhammad Tajammul Husain, Subordinate Judge of Fatehgarh, dated the 31st of July 1902.

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judgment-creditor who had attached the same property, asking for a declaration that the property attached was not saleable in execution of the second judgment-creditor's decree. The suit was based upon the allegation that the decree held by the second judgment-creditor was a decree which, as a matter of law, the Court ought not to have passed, although it was otherwise within the Court's jurisdiction. It was found that the decree impugned had not been obtained by means of fraud. *Held* that the plaintiffs as attaching creditors had no cause of action. The decree assailed might have been a bad decree in law, but it was the decree of a Court which had jurisdiction, and it was not tainted with fraud. *Moti Lal* v. *Karrabuddin* (1) and *Malkarjun* v. *Narhari* (2) referred to.

THE plaintiffs in this case were persons who in execution of a simple money decree had attached certain property. The defendant was the representative in title of one Jai Narain, who had obtained a decree under section 88 of the Transfer of Property Act and a subsequent order absolute under section 89 for sale of certain mortgaged property against the father of the judgment-debtor of the plaintiffs. A sale took place under this decree, and the greater part of the mortgaged property was sold, except a small portion which had previously been disposed of in execution of a decree held by a prior mortgagee. The proceeds of this sale proved insufficient to meet the demand of the mortgagee's representative, and he therefore applied to the Court for a decree over under section 90 of the Transfer of Property Act. Rightly or wrongly he obtained that decree on the 3rd of August 1901. Having obtained it, he sold the decree to one Lachmi Dayal, who in execution thereof attached the property which had been already attached by the plaintiffs. The plaintiffs thereupon came into Court asking for a declaration that the property in question was not saleable in execution of Lachmi Dayal's decree. The Court of first instance (Subordinate Judge of Farrukhabad) dismissed the plaintiff's suit. On appeal the lower appellate Court (District Judge of Farrukhabad) reversed the decree of the Subordinate Judge and decreed the plaintiffs' claim. The defendant Lachmi Dayal appealed to the High Court.

Messrs. *W. K. Porter* and *W. Wallach* and Babu *J. N. Chaudhri* (for whom Munshi *Gulzari Lal*), for the appellant.

(1) (1897) I. L. R., 25 Calc., 179. (2) (1900) I. L. R., 25 Bom., 337.

Pandit *Moti Lal* (for whom Dr. *Tej Bahadur Sapru*), for the respondents.

BLAIR and BANERJI, JJ.—The suit out of which this appeal arises was brought by two persons Har Danni Lal and Nand Kishore against Shib Dayal, Lachmi Dayal, and Rani Indomati. The prayer for relief in the plaint is couched in the following terms:—"That it may be declared that the 6 biswa share in Fatehpur, pargana Kanauj, district Farrukhabad, attached in execution of the plaintiffs' decree and in possession of the defendant No. 1, is not saleable in execution of the decree of the defendant No. 2, Lachmi Dayal, dated the 3rd of August, 1901." The circumstances are a little complicated. The plaintiffs are persons who have attached the property in suit in execution of a simple money decree. The defendant appellant is the representative in title of one Jai Narain, who obtained a decree under section 88 of the Transfer of Property Act, and the subsequent order absolute under section 89 for sale of certain mortgaged property against the father of the judgment-debtor of the plaintiffs. At the sale the greater portion of the mortgaged property was sold; but one small portion having been already sold in execution of the decree of a prior mortgagee, was not sold. The proceeds of the sale proved insufficient to meet the demand of the mortgagee's representative, and he therefore applied to the Court for the personal remedy under section 90 of Act No. IV of 1882. Rightly or wrongly he obtained that decree on the 3rd of August, 1901. That decree he assigned to Lachmi Dayal, the appellant before us. In execution Lachmi Dayal attached the property which had already been attached by the plaintiffs. It is the validity of that decree which forms the basis of the plaintiffs' contention in this case. It is first of all disputed by them on the ground that it had been obtained by fraud. That question has been tried, as a matter of fact, by the lower appellate Court, and it has been found that the decree was not tainted with fraud. The plaintiffs therefore are now driven to the position of assailing the validity of an extant decree against which no fraud can be imputed. We have asked them in vain to show us any authority for the proposition that that decree can now be assailed by them. Their

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position is only that of a person who has obtained an attachment, and it has been expressly held by their Lordships of the Privy Council in the case of *Moti Lal* v. *Karrabuldin* (1) that attachment only prevents alienation, but does not confer title. In this case there is no alienation attempted or proposed, which, under the meaning of the ruling of their Lordships of the Privy Council, amounts to voluntary alienation by one person to another. That, however, is very different from saying that the person who had attached the property in execution of a simple money decree has a *locus standi* to dispute a decree of a competent Court. The Court had jurisdiction to make the decree. That it had jurisdiction is not questioned, and that the decree was not tainted with fraud has been found. It is said that the Court made an erroneous decree. But a Court which has jurisdiction, has jurisdiction to decide wrongly as well as rightly, as had been observed by their Lordships of the Privy Council in *Malkarjun* v. *Narhari* (2). Upon that principle Courts continually act in cases of revision under the Code of Civil Procedure. We note that the plaintiffs do not in their prayer for relief ask for any declaration of the invalidity of the decree obtained by the appellant under section 90 of Act No. IV of 1882. Without inviting us to say that that decree is invalid, it is manifest that it is not open to them to urge that such a decree cannot be executed. In their prayer they dispute solely the saleability of the property in dispute in execution of the decree of the defendant No. 2. They have not asked for a declaration that the decree is invalid, so that there is not before us any prayer the accession to which by this Court would render the execution incapable of being proceeded with. On the other hand, we have no fact before us to show that it is open to them in the absence of fraud to dispute the validity of that decree. We find, therefore, that the plaintiffs have no cause of action, and their plaint discloses no cause of action against the appellant here, and we decree the appeal with costs, and, setting aside the decree of the lower appellate Court with costs, restore that of the Court of first instance.

Appeal decreed.

(1) (1897) I. L. R., 25 Calc., 179. (2) (1900) I. L. R., 25 Bom., 337.