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March 23.*Before Mr. Justice Blair and Mr. Justice Banerji.*

CHIRANJI LAL (PLAINTIFF) v. JAWAHIR MAL AND OTHERS

(DEFENDANTS).*

Civil Procedure Code, s. 285—Execution of decree—Sale by Court of lower grade in ignorance of attachment by Court of higher grade—Sale invalid.

Where the same property has been attached by two Courts of different grades a sale effected by the Court of lower grade is not the less invalid, because it was effected in ignorance of the attachment imposed by the Court of higher grade. *Badri Prasad v. Saran Lal* (1), and *Balkishen v. Narain Das* (2), followed.

THE plaintiff in the suit out of which this appeal arose, in execution of a money decree passed by the Munsif of Khurja, brought to sale and purchased certain property of the judgment-debtor, Jugal Kishore, on the 29th of July, 1898. The defendants held a decree of the Subordinate Judge's Court at Meerut against Jwala Dat, and this Jwala Dat held a decree of the Subordinate Judge's Court at Meerut against Jugal Kishore, in execution of which Jwala Dat, on the 26th of November, 1888, had caused Jugal Kishore's property to be attached by order of the Subordinate Judge of Aligarh, to whose Court the decree had been transferred for execution. On the 21st of September, 1889, the defendants in execution of their decree against Jwala Dat obtained attachment of Jwala Dat's decree against Jugal Kishore and subsequently applied for the sale of Jugal Kishore's property, which had been attached on the 26th of November, 1888. The plaintiff filed objections to the sale, but they were dismissed, and he accordingly brought the present suit, in which he asked for a declaration that the property purchased by him was not liable to sale in execution of Jwala Dat's decree which the defendants had attached.

The Court of first instance (Munsif of Koil) dismissed the suit, holding that the sale at which the plaintiff had purchased was invalid owing to want of jurisdiction on the part of the Munsif to sell property already attached by a Court of higher grade, namely, that of the Subordinate Judge of Aligarh. The

* Second Appeal No. 323 of 1902, from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 25th of January, 1902, confirming a decree of Babu Khittar Mohan Ghose, Munsif of Koil, dated the 16th of November, 1900.

(1) (1882) I. L. R., 4 All., 359.

(2) (1896) I. L. R., 18 All., 341.

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plaintiff appealed and the lower appellate Court (Additional Subordinate Judge of Aligarh) dismissed the appeal, finding, after referring an issue on the point to the lower Court, that neither the Munsif of Khurja nor the plaintiff had notice of the attachment of the property, the subject of the suit, by the Subordinate Judge of Aligarh. The plaintiff thereupon appealed to the High Court.

Babu *Satya Chandra Mukerji*, for the appellant.

Munshi *Gobind Prasad* and Dr. *Satish Chandra Banerji*, for the respondents.

BLAIR and BANERJI, JJ.—There is only one question seriously raised in this appeal. It is whether, when Courts of different grades have attached the same property in execution of decrees and the Court of lower jurisdiction has sold under its decree, without notice or knowledge of the proceedings in the other Court, the sale effected by it is valid or invalid. In other words, whether the ignorance of the Court of lower jurisdiction of the proceedings taken and pending in the Court of superior jurisdiction takes the case out of the provisions of section 285 of the Code of Civil Procedure. The rulings of the High Courts of Madras and Bombay are no doubt in favour of the appellant's contention, but the consensus of rulings of this Court has decided, and we see no reason for differing from them, that a sale by a lower Court with or without notice is not an irregularity but is a usurpation of jurisdiction in the teeth of the provisions of section 285 of the Code of Civil Procedure. From the case of *Badri Prasad v. Saran Lal* (1), up to the case of *Balkishen v. Narain Das* (2), there is no ruling as far as we know extant to the contrary. We not only follow these authorities, but we do so because we agree with the rulings. The plaintiff therefore has, in our opinion, no case, and his appeal must be and is hereby dismissed with costs.

Appeal dismissed.

(1) (1882) I. L. J. R., 4 All., 359.

(2) (1896) I. L. R., 18 All., 348