

Before Mr. Justice Sir George Knox and Mr. Justice Griffin.

ALI AHMAD KHAN (OBJECTOR) v. BANSI DHAR AND OTHERS (DECREE-HOLDERS).\*

1909  
April 7.

*Code of Civil Procedure (Act XIV of 1882) sections 278, 283—Execution of decree—Attachment—Objection allowed—Suit by decree-holder decreed—Previous attachment whether subsisting.*

Held that the lien of an attaching creditor over the property attached dated from the attachment and was not destroyed or affected by an order of release which was in effect set aside by a subsequent decree, in a regular suit. *Mahomed Warris v. Pitambur Sen* (1), *Bonomali v. Prosunno* (2), *Ram Chandra v. Mudeshwar* (3), *Lalu v. Kashi* (4), and *Bank of Upper India v. Sheo Prasad* followed (5).

THE material facts will appear from the judgment.

Hon'ble Pandit *Sundar Lal*, and Babu *Lalit Mohan Banerji*, for the appellants.

Mr. *Abdul Raoof*, for the respondents.

KNOX and GRIFFIN, JJ.—This first appeal arises out of execution proceedings connected with a decree held by the respondents obtained by them on the 27th of May 1895 and confirmed by this Court on the 22nd of March 1897.

The respondents, in execution proceedings instituted on the 17th December 1897, attached certain properties with a portion of which we are concerned in the present application. On the objection of Gauri Sahai and Chadammi Lal, the properties with which we are concerned were released from attachment. The decree-holders then instituted a suit under section 283 and obtained a decree in June 1899, declaring that the attached property be brought to sale in execution of their decree. On the 18th January 1901, *Musammat Mohan Kuar*, one of the judgment-debtors in the original decree, sold the property in suit to one *Bholanath*. *Ali Ahmad* the present appellant, then instituted a suit for and obtained a decree for pre-emption over the same property.

The application out of which the appeal has immediately arisen, was instituted on the 13th May 1907, to bring to sale the property attached as far back as the 9th of January 1898.

\* First Appeal No. 221 of 1908, from a decree of Muhammad Mubarak Husain, Subordinate Judge of Shahjahanpur, dated the 11th of July 1908.

(1) (1874) 21 W. R., 435. (3) (1906) I. L. R., 33 Calc., 1158.  
(2) (1896) I. L. R., 23 Calc., 829. (4) (1886) I. L. R., 10-Bom., 400.  
(5) Weekly Notes, 1897, p. 124.

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Ali Ahmad objected saying *inter alia* that the property cannot be sold. His objections were dismissed by the court below and he now comes here in appeal. No argument was addressed to us on the first ground contained in the memorandum of appeal. The second ground, *viz.* that the attachment of 1898 no longer subsists does not commend itself to us. It has been held by the Calcutta High Court in an exactly similar case, *Bonomali Rai v. Prosunno Narain Chowdhry and Muzaffar Shah* (1), following *Mahomed Warris v. Pitambur Sen* (2), that the case in the Weekly Reporter was a clear authority for the view that "the lien of the attaching creditor dated from the attachment and was not destroyed or affected by the order of release which was in effect set aside by the decree. This point was again considered and these cases were followed in *Ram Chandra Marwari v. Mudeshwar Singh* (3). This view is also consistent with that taken by the Bombay High Court in *Lalu Mulji Thakar v. Kashi Bai* (4) and *The Bank of Upper India v. Sheo Prasad and others* (5). We would note at the same time that from the commencement and up to date there has been an unbroken continuity in the efforts made by the decree-holder to obtain satisfaction of his decree. The original purchaser Bholanath purchased the property at a time when it was subject to an attachment order of a Civil Court and Ali Ahmad can hold no higher position.

This disposes of the remaining pleas taken in appeal. The appeal is dismissed with costs.

*Appeal dismissed.*

1909  
April 16.

*Before Sir John Stanley, Knight, Chief Justice and Mr. Justice Banerji.*

SHERALAL SINGH (PLAINTIFF) v. SUKHDEO SINGH AND OTHERS

(RESPONDENTS.)\*

*Act (Local) No. II of 1901 (Agra Tenancy Act), section 7—Applicability of—to mortgage executed in 1894—Mortgage of six—Whether mortgagor obtains expropriatory rights.*

R in 1894 made a usufructuary mortgage of his *sir* land to the plaintiff, S, the son of R, on the following day executed a *kabuliat* promising to pay rent in respect of that land to the mortgagee. The lower appellate court held that S

\* Appeal No. 90 of 1908 under section 10 of the Letters Patent.

(1) (1896) I. L. R., 23 Cal., 829.      (3) (1906) I. L. R., 33 Cal., 1158.  
(2) (1874) 21 W. R., 435.              (4) (1886) I. L. R., 10 Bom., 400.  
(5) Weekly Notes, 1897, p. 124.