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to certain conditions. There is nothing in law to prevent the parties to a mortgage from coming to any arrangement afterwards qualifying the right to redeem. In the present case it is not alleged that the action is brought upon a breach of the covenant contained in the deed of compromise. Their Lordships are therefore of opinion that the suit was rightly dismissed by the Judicial Commissioners, and they will humbly advise His Majesty to dismiss this appeal with costs.

Appeal dismissed.

Solicitors for the appellants:—*T. L. Wilson & Co.*

Solicitors for the respondent No. 1.—*Barrow, Rogers, & Nevill.*

APPELLATE CIVIL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

SRI CHAND (DECREE-HOLDER) v. MURARI LAL (JUDGEMENT-DEBTOR).*

Act No. III of 1907 (Provincial Insolvency Act), sections 16 and 34—Execution of decree against the insolvent during pendency of insolvency proceedings—Right of decree-holder in respect of proceeds of property attached and sold and money attached before order of adjudication.

Whilst proceedings in insolvency under the Provincial Insolvency Act, 1907, were pending, certain immovable property of the insolvent was attached and sold in execution of a decree against him, and the proceeds deposited in court for the benefit of the decree-holder. The decree-holder also attached certain moneys which had been paid into court to the credit of the insolvent, but up to the date of the order of adjudication had taken no further steps to possess himself thereof. *Held* that the decree-holder was entitled as against the receiver to the benefit of the proceeds of execution of his own decree, but not to the money of the insolvent which he had attached. *Peacock v. Madan Gopal* (1) followed.

The facts of this case were as follows:—

Ram Saran Das and two others were, on an application by one of their creditors, dated the 21st of February, 1911, adjudged insolvents on the 1st of February, 1912. The appellant, Sri Chand, was one of the creditors and was made a party to the insolvency proceedings. In execution of a decree which Sri Chand had obtained against the persons adjudged insolvents, he attached, in November, 1911, a sum of Rs. 1,139-12-3, which was in deposit in the court of the Subordinate Judge to the credit of those persons; and, further,

*First Appeal No. 79 of 1912 from an order of Sushil Chandra Banerji, Officiating Second Additional Judge of Meerut, dated the 29th of March, 1912.

(1) (1902) I. L. R., 29 Cal., 428.

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caused a house of theirs to be sold by auction, the sale proceeds of which were deposited in court to his credit in January, 1912. At the date of the order of adjudication, namely, the 1st of February, 1912, both these sums of money remained unpaid to Sri Chand. He applied, on the 6th of March, 1912, for payment of these sums to himself, claiming, under section 34 (1) of the Provincial Insolvency Act, priority over the receiver. The application was refused. From the order of refusal he appealed to the High Court.

Mr. *M. L. Agarwala*, for the appellant.

Sri Chand has priority over the receiver in respect of the two sums. There was nothing to prevent him from executing his decree and realizing the money for himself as long as the order of adjudication was not passed. Both the sums are assets "realized," within the meaning of section 34 (1), before the date of the order of adjudication. As to the item of Rs. 1,139-12-3, as soon as Sri Chand attached the money, it became payable to him and could be said to have been "realized." Upon the attachment the court had no option but to make it over to him; the writing of a formal order being, therefore, only a mechanical act, its absence is immaterial. When the money was attached it came to be at my disposal and ceased to be the property of the judgment-debtors. Decree-holders attaching subsequently to the receipt of the money by the court which ordered the first attachment cannot claim contribution; *Srinivasa Ayyangur v. Seetharamayyar* (1). The words "assets realized" were also used in section 295 of the old Code of Civil Procedure. The meaning of the word "realized" as used there was explained in *Manilal Umedram v. Nanabhai Maneklal* (2). The money was in deposit in the court of the Subordinate Judge; it was attached by an order of the court of the Second Additional Subordinate Judge; and as soon as it was received by the latter court, it became an asset "realized." I also rely on the case of *Debi Prasad v. O. M. Chiene* (3). Similarly, as regards the sale proceeds of the house, as soon as the money was paid into court, it became an asset realized, although it was not actually paid over to Sri Chand. The ruling relied on by the lower court in *Frederick Peacock v. Madan Gopal* (4) is clearly distinguishable. There the property had been attached but not

(1) (1895) I. L. R., 19 Mad., 72

(3) (1912) 9 A. L. J., 707.

(2) (1903) I. L. R., 28 Bom., 264.

(4) (1902) I. L. R., 29 Cal., 428.

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sold prior to the order of adjudication and appointment of a receiver.

The respondent (receiver) was not represented.

MUHAMMAD RAFIQ and PIGGOTT, JJ. :—In this case, the appellant, Sri Chand, held a decree against one Murari Lal. Proceedings to have this judgement-debtor declared insolvent were pending from the 21st of February, 1911, to the 1st of February, 1912. Sri Chand, as one of the creditors, had notice of these proceedings. While, however, they were going on, he took an opportunity to continue executing his decree, and we can find nothing in law to prevent him from doing so, up to the date when an order of adjudication was passed. He attached certain immovable property of his judgement-debtor and got it put up to sale, and the sale proceeds were deposited in court in the month of January, 1912. We think he was entitled to the money so deposited, and the order of the court below to the contrary was wrong. The deposit was for the benefit of the decree-holder. It was not the property of the judgement-debtor which could vest in the court or in the official receiver under the provisions of section 16, clause (2) of the Provincial Insolvency Act, and it also came within the definition of the assets realized in the course of execution within the meaning of section 34 of the same Act. We think, however, that the order of the court below was right and the appeal should not be allowed in respect of another item of Rs. 1,139-12-3. This seems to have been the surplus proceeds of a sale of some other property of Murari Lal's in execution of some other decree. In the month of November, 1911, it was lying to the credit of Murari Lal in the court of the Subordinate Judge of Meerut. Sri Chand applied to the court executing his decree to attach this money for his benefit, and obtained an order of attachment. But nothing further had been done before the order of adjudication against Murari Lal was passed. There had been no order under rule 8 of order XXI, Code of Civil Procedure, vesting the money so attached in the decree-holder. It was, therefore, the property of the insolvent on the date on which the order of adjudication was passed and so vested in the insolvency court and became divisible among the creditors. We are not prepared to hold that section 34 of the Provincial Insolvency Act gives the appellant, Sri Chand, any

special claim in respect of this money. It may have been, and no doubt was, realized in the course of the execution of the other decree, in the execution of which the sale took place; but it was attached by Sri Chand simply as movable property belonging to his judgement-debtor in the hands of the court of the Subordinate Judge. It was, therefore, subject to the provisions of the Code which deal with the satisfaction of a decree by attachment of movable property. We think the ruling relied on by the court below in *Frederick Peacock v. Madan Gopal* (1) is in point and should govern our decision. We, accordingly, allow this appeal only to this extent, that we set aside the order of the court below as regards the sale proceeds deposited in the court of the Second Additional Subordinate Judge of Meerut in the month of January, 1912, as proceeds of the auction sale held in execution of Sri Chand's own decree. The money thus deposited, Sri Chand is entitled to realize and to apply to the satisfaction of his decree.

We dismiss the appeal as regards the attached item of Rs. 1,139-12-3 holding that the court below was right in directing this sum to be realized for the benefit of the creditors in insolvency. The appellant will get his proportionate costs.

Appeal allowed in part.

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Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

ISHRI PRASAD (DEFENDANT) v. GOPI NATH AND OTHERS (PLAINTIFFS.)*

Act No. III of 1877 (Indian Registration Act), section 50—Registration—Mortgage—Priority between registered and unregistered deeds.

Property which was the subject of two unregistered mortgages of different dates was sold in execution of a decree on the later of the two mortgages and purchased by the decree-holder, who afterwards sold it by an unregistered deed to Bal Kishan, who in turn sold it by a registered deed without making any mention of the prior unregistered mortgage. *Held* that after such sale no suit would lie on the prior unregistered mortgage. *Sobhagchand Gulatchand v. Bhairchand* (2), *Baldeo Prasad v. Baldeo* (3) and *Ram Lal v. Thakur Bachcha Singh* (4) referred to.

The facts of this case were as follows :—

Shib Lal and others executed a simple mortgage on the 21st of August, 1894, in favour of Gopi Nath and others by means of an unregistered deed. Subsequent to that date the same mortgagors

* Appeal No. 34 of 1912 under section 10 of the Letters Patent.

(1) (1902) I. L. R., 29 Calc., 428.

(2) (1882) I. L. R., 6 Bom., 193.

(3) Weekly Notes, 1901, p. 112.

(4) (1912) 10 A. L. J., 114.