

unobjectionable. When the *karta* died, it became necessary to substitute the name of his successor. Article 30 of the articles of association appears to me to cover the case. Piari Lal has become entitled to the entry of his name in consequence of the death of Sheomukh Rai. It is pointed out by the learned counsel for the company that the words of the article are "any person becoming entitled to shares" and that I am interpreting the article as though the words were "any person becoming entitled to registration," but I think I am stating the intention of the framers, and I do not think that I am stretching the words unduly in finding that Piari Lal is entitled to the shares.

By THE COURT.—We allow the application, set aside the order of the court below and direct that the name of Piari Lal be entered in the share registers of Muir Mills Company, Limited, in place of Lala Sheomukh Rai, deceased, and that all the share registers of the company be rectified accordingly. Each party should bear its own costs.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

GULAB AND OTHERS (DEFENDANTS) v. MUTSADDI LAL (PLAINTIFF) *
Civil Procedure Code (1908), Order XXI, rule 58—Execution of decree—Act No. IX of 1908 (Indian Limitation Act), schedule I, article 11—Limitation—Objection to attachment dismissed—Subsequent suit for possession—"Investigation" of objection by Court.

1919,
 April, 15.

Where an objection made to the attachment of property under rule 58, order XXI, of the Code of Civil Procedure (1908), is disallowed because the objector did not appear on the date fixed, the order disallowing the objection is an order "against" the objector within the meaning of rule 63.

THIS was the defendants' appeal from an order of remand in a suit to recover property sold in execution of a decree.

The facts connected with this appeal are shortly as follows:—More than a year before the institution of the present suit certain property was attached in execution of a decree. An objection was put forward by the plaintiff's vendor that the property was not the property of the judgment-debtor, and, therefore, not liable to attachment. The objector not only stated the nature of his

* First Appeal No. 17 of 1919, from an order of Jagat Narayan, First Additional Judge of Aligarh, dated the 21st of November, 1918.

1919

GULAB
v.
MUTSADDI
LAL.

objection but he made an application to summon his witnesses. Upon a date fixed for the hearing of the case he was not present, but the case was adjourned to another date to enable him to appear. Upon the adjourned date he did not appear, and the court below made an order disallowing the objection in the absence of the objector. The present suit was instituted by a purchaser from the objector more than a year after the objection of his vendor had been disallowed in the manner stated. The court of first instance held that the suit was barred by the provisions of article 11 of the Limitation Act. The lower appellate court reversed the decree and remanded the case, holding that, inasmuch as the objection had been disallowed 'in the absence' of the objector, there had been no investigation and therefore article 11 of the Limitation Act did not apply.

Munshi *Girdhari Lal Agarwala*, for the appellant :—

If the objector applies for time to adduce evidence and gets an opportunity and still produces no evidence and on the date of hearing absents himself, he will be considered to have failed to support his objection at the investigation; *Rahim Bux v. Abdul Kader* (1). There is no difference in principle between the man who fails to adduce proof in support of his objection or produces evidence which does not satisfy the court, and the man who is given an opportunity and does not produce evidence and absents himself. The rulings in *Shagun Chand v. Shibbi* (2) and *Gokul v. Mohri Bibi* (3) support my contention. The plaintiff is bound by the acts of his vendor.

Munshi *Gulzari Lal*, for the plaintiff respondent :—

My client's vendor did not adduce any proof, and the objection was dismissed for default. There was no investigation as contemplated by order XXI, rule 58. Article 11 of the Limitation Act, therefore, does not apply. The difference between an objector who on the date fixed for the hearing of the objection comes to court and confesses that he has no evidence to support the objection and a person who stays outside the court-room and allows his case to go for default is a difference in principle. In a regular suit the plaintiff, if he absents himself and allows the

(1) (1904) I.L.R., 32 Calc., 537.

(2) (1911) 8 A.L.J., 626.

(3) (1918) I.L.R., 40 All., 325.

suit to be dismissed can apply for restoration; not so if he comes to court and admits that he cannot support his claim. In this case the plaintiff's vendor, who was the objector, did not intentionally stay outside the court-room.

Munshi *Girdhari Lal Agarwala*, was not heard in reply.

RICHARDS, C.J., and BANERJI, J.:—The facts connected with this appeal are shortly as follows:—More than a year before the institution of the present suit certain property was attached in execution of a decree. An objection was put forward by the plaintiff's vendor that the property was not the property of the judgment-debtor, and, therefore, not liable to attachment. The objector not only stated the nature of his objection but he made an application to summon his witnesses. Upon a date fixed for the hearing of the case he was not present, but the case was adjourned until another date, to enable him to appear. Upon the adjourned date he did not appear, and the court below made an order disallowing the objection in the absence of the objector. The present suit was instituted by a purchaser from the objector more than a year after the objection of his vendor had been disallowed in the manner stated. The court of first instance held that the suit was barred by the provisions of article 11 of the Limitation Act. The lower appellate court reversed the decree and remanded the case, holding that, inasmuch as the objection had been disallowed 'in the absence' of the objector, there had been no *investigation* and therefore article 11 of the Limitation Act did not apply.

We think the court below was wrong. It is admitted that if the objector had appeared on the 2nd of September, 1916, (the day on which his objection was disallowed in his absence) and stated that he could not sustain his objection, then the article would have applied. We find it impossible to hold that where an objector comes forward and says that he cannot sustain an objection, the article applies, while if he takes care to remain absent, the article will not apply. It is quite clear that the policy of the law is that these objections should be speedily decided and that there should be a short period of limitation allowed for the party against whom the order was made. It seems to us quite clear under the circumstances of the present

1919

GULAB
v.
MUTSADDI
LAL.

1919

GULAB
v.
MUTSADDI
LAL.

case that an order was made that was "against" the vendor of the plaintiff and that the plaintiff can be in no better position than his vendor. Accordingly we allow the appeal, set aside the order of the court below and restore that of the court of first instance with costs.

Appeal allowed.

Before Mr. Justice Walsh and Mr. Justice Stuart.

JHUMAK RAI AND ANOTHER (DEFENDANTS) v. BINDESHRI RAI AND OTHERS (PLAINTIFFS)*.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233(k) — Partition—Property wrongfully assigned to one party owing to a fraud practised on the Revenue Court—Suit in Civil Court to recover property so assigned—Jurisdiction.

An action will lie in a Civil Court to provide a remedy where a person's rights have been infringed by some fraudulent act of the defendant, even though the fraud was one practised upon a Revenue Court, and would affect the result of partition proceedings. *Mahadeo Prasad v. Taktia Bibi* (1) and *Raghunandan Ahir v. Sheonandan Ahir* (2) followed. *Muhammad Sadig v. Lante Ram* (3) referred to.

IN the course of proceedings for partition in a Court of Revenue certain bamboo clumps had been assigned to the defendants. The plaintiffs alleged that the trees had been wrongfully assigned to the defendants in consequence of a fraud practised on the Court of Revenue, the fraud consisting of entries wrongfully made in certain revenue papers by subordinate revenue officials acting in collusion with the defendants. The plaintiffs accordingly brought their suit in the Civil Court to recover possession of these trees. The court of first instance dismissed the plaintiffs' suit, finding that a Civil Court had no jurisdiction to entertain it. On appeal, however, the decree of the first court was set aside and the case was remanded for trial on the merits. The defendants appealed to the High Court against this order of remand.

Pandit *Uma Shankar Bajpai*, for the appellants.

Babu *Piari Lal Banerji*, for the respondents.

WALSH, J.:—This is an appeal from an order of remand. The plaintiffs' case is that they have been deprived of their rights by

* First Appeal No. 7 of 1919, from an order of Jogindro Nath Chaudhri, Subordinate Judge of Ghazipur, dated the 23rd of November, 1918.

(1) (1902) I. L. R., 25 All., 19. (2) (1918) I. L. R., 41 All., 182.

(3) (1901) I. L. R., 28 All., 291.

1919
May, 7.