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that I am clearly of opinion that the law in regard to it as laid down by the Subordinate Judge and recapitulated by Mr. Justice Oldfield is correct.

*Decree modified.*

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April 25,

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

GUMANI (PLAINTIFF) v. HARDWAR PANDEY AND OTHERS (DEFENDANTS)\*

*Attachment of Immoveable property—Material misdescription—Private alienation after attachment—Act X. of 1877 (Civil Procedure Code), ss. 237, 274, 276.*

Application was made for the attachment in execution of a decree of a muafi holding belonging to the judgment-debtor. The numbers and areas given in such application as the numbers and areas of the lands comprised in such holding were the numbers and areas of certain revenue-paying lands, and were not the numbers and areas of any lands held as muafi by the judgment-debtor. The order of attachment described the property as described in the application for attachment. The judgment-debtor having alienated by sale a muafi holding belonging to him, the decree-holders sued to have such alienation set aside as void under the provisions of s. 276 of Act X of 1877. *Held* that, having regard to the description given in the application for attachment and the order of attachment, it could not be said that the muafi holding alienated by the judgment-debtor was under attachment at the time of the alienation, and its alienation was therefore not void under s. 276 of Act X of 1877. *Held* also that the material misdescription of the property in this case in the order of attachment protected the alienees, who were *bona fide* purchasers, from having the alienation set aside as void under s. 276, as the attachment could not under the circumstances be held to have been "duly intimated and made known" as required by that section.

THE plaintiff in this suit claimed possession of certain lands by virtue of a conveyance dated the 6th September, 1878. The principal defendants in the suit were the holders of a decree against the vendors of such lands to the plaintiff. Such defendants alleged in defence of the suit that, at the time of the conveyance of such lands to the plaintiffs, such lands were under attachment in execution of their decree against the vendors to the plaintiff, and that in consequence, under the provisions of s. 276 of Act X of 1877,

\*Second Appeal, No. 1006 of 1880, from a decree of Maulvi Mahmud Bakhsh, Additional Subordinate Judge of Gházipur, dated the 6th August, 1880, affirming a decree of Munshi Manmohan Lal, Munsif of Ballia, dated the 26th May, 1880.

the conveyance to the plaintiff was void. The plaintiff denied that such lands were under attachment in execution of the decree of the defendants at the time of such conveyance. Both the lower Courts dismissed the suit, holding, with reference to the attachment proceedings, that such lands were under attachment when conveyed to the plaintiff, and such conveyance was consequently void under the provisions of s. 276 of Act X of 1877.

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On second appeal the plaintiff contended that, on the proper construction of the attachment proceedings, such lands were not under attachment at the time of their conveyance to him, and such conveyance was therefore not affected by the provisions of s. 276 of Act X of 1877.

Mr. *Conlan* and *Lala Lalta Prasad*, for the appellant.

Munshi *Hanuman Prasad*, Pandit *Ajudhia Nath*, and Mr. *Simeon*, for the respondents.

The judgment of the Court (OLDFIELD, J., and STRAIGHT, J.,) was delivered by

OLDFIELD, J.—The plaintiff has bought from certain judgment-debtors of the answering defendants-respondents before us 3 bighas 15 biswas of muafi or revenue-free land bearing in the revenue registers the No. 28. The question is whether the sale is void under s. 276, Civil Procedure Code, by reason of the land having been attached by the respondents at the time of sale in execution of their decree. We find by a reference to the application for attachment that the respondents applied for attachment of their judgment-debtors' interests in a muafi holding, and they appended a list of the property in which it was described as a muafi holding, formerly recorded in the name of *Bechu Chaubey*, and afterwards of his own son, *Shankar*, from whom it was bought by *Ganga Bishan* and *Radha Pandey*, and at the time in possession of the judgment-debtor, the sister of *Radha Pandey*, and the holding is stated to have measured at the settlement of 1937, 3 bighas 4 biswas, and at the present time 6 bighas 12 biswas 13 dhurs, and

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the details of the said 6 bighas 12 biswas 13 dhurs are given at the foot of the paper, thus :—

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			Bighas	Biswas	Dhurs.
No. 4 ...	...	1	5	16	
Corner ...	...	0	12	4	
No. 19 ...	...	0	16	0	
" 27 ...	...	1	9½	0	
" 136 ...	...	2	10	0	Public road.
Total	...	6	12	13	

Deduct 2 bighas 12 biswas and 13 dhurs in Shankar Chaubey's possession, balance 4 bighas of land of which the judgment-debtor's share is stated to be 2 bighas.

The attachment was made by an order under s. 274, Civil Procedure Code, describing the property in the terms of the above application. It appears, however, that the lands with numbers and area above given are not a muafi holding, but are in fact revenue paying lands, and do not correspond either in numbers or area with any muafi holding of the judgment-debtor, and it is contended that the plaintiff, who bought a particular muafi holding No. 28, comprising 3 bighas 15 biswas, cannot be held to have bought any land under attachment, or be liable to have his purchase set aside under s. 276, Civil Procedure Code. The contention is in our opinion valid. In order to ascertain what was attached in fact, we have to look at the order made under s. 274. The description of the property given in that order is the same as the respondents gave in their application under the requirements of s. 237, which directs that a description of the property sufficient to identify it be given at the foot of the application. It is, however, impossible to say with regard to this description that the particular land bought by the plaintiff was attached; for, though referring to a muafi holding, the particular land pointed out is of another description, and if we look at that part of the description which gives numbers and area, and for purposes of identification this is the most important part, it in no way applies to the land plaintiff bought, but on the contrary it refers to quite a different property. It may have been the intention of the respondent to attach the muafi holding, and the reference to numbers and area may have been an error, but it is equally open to contend that he intended to attach the revenue paying land, and his error was in calling

it muafi land. At any rate it is impossible to hold that the land No. 28, comprising 3 bighas 15 biswas, bought by plaintiff was attached under the order. Besides the very material misdescription of the land as applied to the land plaintiff bought, entered in the order of attachment, will protect a *bonâ fide* purchaser like the plaintiff from having his purchase set aside under s. 276, as the attachment cannot under the circumstances be held to have been "duly intimated and made known" as required by the section. We decree the appeal and set aside the decrees of the lower Courts, and decree the claim with costs.

*Appeal allowed.*

*Before Mr. Justice Oldfield and Mr. Justice Straight*

RAM DIAL (PLAINTIFF) v. MAHTAB SINGH AND OTHERS (DEFENDANTS)\*

*Sale in execution—Order of attachment and sale-notifications not signed by Judge but by munsarim—Sale set aside—Suit to have sale confirmed—Act VIII of 1859 (Civil Procedure Code), ss. 222, 256, 257—Equitable estoppel.*

On the 21st August, 1876, certain immoveable property belonging to *M* was put up for sale and was purchased by *R*. On the 20th April, 1877, such sale was set aside under s. 256 of Act VIII of 1859, on the ground that the order attaching such property and the notifications of sale had not, as required by s. 222, been signed by the Court executing the decree but by the munsarim of the Court. On the 27th June, 1877, *M* conveyed such property to *H*, who purchased it *bonâ fide*, and for value, and satisfied the incumbrances existing thereon. On the 15th April, 1878, *R* sued *H* and *M* to have the order setting aside such sale set aside, and to have such sale confirmed in his favour, on the ground that it had been improperly set aside under s. 256 of Act VIII of 1859, the judgment-debtor not having been prejudiced by the irregularities in respect whereof such sale had been set aside. Held by OLDFIELD, J., that, although such sale might have been improperly set aside, yet inasmuch as the order of attachment and the notifications of sale could have no legal effect, having been signed by the munsarim of the Court executing the decree, and not by the Court, as required by s. 222 of Act VIII of 1859, and inasmuch as it would be inequitable, after the incumbrances on such property had been satisfied and the state of things changed, to allow *R*, after standing by for a year, and permitting dealings with the property, to come in and take advantage of the change of circumstances and obtain a property become much more valuable at the price he originally offered, *R* ought not to obtain the relief which he sought.

\* First Appeal, No. 113 of 1879, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 30th June, 1879.

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