

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr Justice Ziaul Hasan

THAKUR BISMOHAN SINGH (PLAINTIFF-APPELLANT) v. 1936
JAGAT BAHADUR SINGH AND ANOTHER (DEFENDANTS-
RESPONDENTS)* August 28

*Civil Procedure Code (Act V of 1908), section 73 and Order XXI,
rule 55(2)(b)—Order XXI, rule 55 as amended by Oudh
Chief Court, scope and object of—Rule 55(2), C. P. C., which
creditors can avail of.*

Under Order XXI, rule 55(1), C. P. C. as amended by the
Oudh Chief Court, notice is required to be sent to the sale
officer of an application under section 73(1), C. P. C., for rate-
able distribution of assets. Order XXI, rule 55(2), C. P. C.,
undoubtedly means that unless along with the decree of the
attaching creditor, the decree of an applicant for rateable dis-
tribution is also satisfied, the attachment shall not be deemed
to be withdrawn. In other words, the meaning is that the
original attachment shall enure for the benefit of the decree-
holder who has applied for rateable distribution of assets
under section 73, C. P. C. This, however, does not and can-
not mean that the attachment will enure for the benefit even
of those who may apply for execution by rateable distribution
of assets in future. The words "notice of which has been sent
to the sale officer under Order XXI, rule 55(1), C. P. C.," clearly
show that the rule can be availed of only by those decree-
holders who have applied for rateable distribution prior to
the satisfaction of the decree. *Dal Chand v. Mool Chand* (1),
and *Mehar Chand v. Joti Prasad* (2), referred to.

Messrs. *Radha Krishna Srivastava* and *Nand Lal
Varma*, for the appellant.

Messrs. *S. N. Srivastava* and *Ram Swarup Nigam*, for
the respondents.

ZIAUL HASAN, J.:—This is a plaintiff's appeal against
a decree of the learned District Judge of Rae Bareli

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*Second Civil Appeal No. 238 of 1934, against the decree of Mr. K. N.
Wanchoo, I.C.S., District Judge of Rae Bareli, dated the 3rd of May, 1934,
upholding the decree of Babu Kali Charan Agarwal, Munsif of Partabgarh,
dated the 11th of October, 1933.

(1) (1934) All., 896.

(2) (1934) All., 1057.

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affirming the decree of the learned Munsif of Partabgarh which dismissed the plaintiff-appellant's suit for a declaration that certain property is liable to be sold in execution of his decree against Sheomangal Singh and that the deed of sale executed by Sheomangal Singh in favour of Jagat Bahadur Singh respondent No. 1 is fictitious, fraudulent and void under section 64 of the Code of Civil Procedure.

The facts are that the appellant Bismohan Singh obtained a decree for Rs.2,851 against Sheomangal Singh on the 21st of March, 1929, from the Court of the Subordinate Judge of Partabgarh. On the 6th of March, 1930, he applied for execution of his decree and on the 22nd of March, 1930, the property in question was attached. One Gopi held a decree of the Munsif's Court against the same judgment-debtor and on Gopi's application the Munsif transferred the decree to the Subordinate Judge, Partabgarh, for rateable distribution of the assets to be realised in execution of Bismohan Singh's decree. The property attached by Bismohan Singh was sold on the 21st of November, 1931, but on the 21st of December, 1931, the judgment-debtor paid up the decretal amount with the requisite penalty. The sale was set aside and the execution case struck off as fully satisfied. On the 12th of January, 1932, in consequence of the decree being satisfied, the Court ordered release of the property from attachment but passed an order that it should be deemed to be under attachment in execution of Gopi's decree. Intimation of this was sent to the Munsif who had sent Gopi's decree for rateable distribution to the Court of the Subordinate Judge. On the same date on which the judgment debtor deposited the decretal amount in Court, namely, the 21st of December, 1931, Sheomangal Singh executed a sale deed of the property in favour of Jagat Bahadur Singh and on the same date Bismohan Singh obtained another decree for Rs.1,547-5 against Sheomangal Singh from the Court of the Munsif. On the 19th of January,

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1932, Bismohan Singh put his decree of the 21st of December, 1931, in execution and prayed for rateable distribution of the assets to be realised in execution of Gopi's decree. Gopi's application for execution was however dismissed for default on the 4th of March, 1932, but the learned Munsif ordered that the property be deemed as under attachment in execution of Bismohan Singh's decree. On execution progressing, Jagat Bahadur Singh brought an objection under Order XXI, rule 58 of the Code of Civil Procedure on the strength of the sale deed in his favour and his objection was allowed. It was on this that the suit from which this appeal arises was brought by Bismohan Singh.

Both the Courts below dismissed the appellant's suit holding that the sale in favour of Jagat Bahadur Singh was not void either under section 53 of the Transfer of Property Act or under section 64 of the Code of Civil Procedure. The learned District Judge has found that the entire consideration for the sale was genuine and that the sale deed was not executed to defeat or delay the creditors. These findings are findings of fact and have not been seriously challenged before us. It was, however, strenuously argued that the sale in favour of respondent No. 1 was void under section 64 of the Code of Civil Procedure read with Order XXI, rule 55 as amended by this Court.

I am of opinion that the benefit of section 64 of the Code of Civil Procedure cannot be extended to the appellant in this case for the simple reason that attachment of the property in question in execution of Gopi's decree, from which the appellant applied for rateable distribution, was not in existence on the date on which the sale in favour of respondent No. 1 was made. It was only on the 12th of January, 1932, that the Court ordered that the property be deemed to be under attachment in execution of Gopi's decree while the sale deed in favour of Jagat Bahadur Singh had been executed on the 21st of December, 1931.

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Reliance is placed on Order XXI, rule 55, sub-rule 2(b) of the Code of Civil Procedure as amended by this Court which runs as follows:

“Where satisfaction of the decree (including any decree passed against the same judgment-debtor, notice of which has been sent to the sale officer under sub-rule (1), is otherwise made through the Court or certified to the Court . . . the attachment shall be deemed to be withdrawn . . .”

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Under sub-rule (1) notice is required to be sent to the sale officer of an application under section 73, subsection (1) of the Code for rateable distribution of assets. Rule 55(2) (b) undoubtedly means that unless along with the decree of the attaching creditor, the decree of an applicant for rateable distribution is also satisfied, the attachment shall not be deemed to be withdrawn. In other words the meaning is that the original attachment shall enure for the benefit of the decree-holder who has applied for rateable distribution of assets under section 73 of the Code of Civil Procedure. This, however, does not and cannot mean that the attachment will enure for the benefit even of those who may apply for execution by rateable distribution of assets in future. The words “notice of which *has been sent* to the sale officer under sub-rule (1)” clearly show that rule 55(2) can be availed of only by those decree-holders who have applied for rateable distribution prior to the satisfaction of the decree. As, therefore, the appellant did not apply for rateable distribution prior to his previous decree being satisfied, he cannot claim the benefit of Order XXI, rule 55(2) of the Code of Civil Procedure.

Reliance is placed on behalf of the appellant on the case of *Dal Chand v. Lala Mool Chand* (1) while the Counsel for the respondents takes his stand on the case of *Lala Mehar Chand v. Lala Joti Prasad* (2) but as the facts of the present case are quite peculiar and not

(1), (1934) All., 896.

(2) (1934) All., 1057.

covered by either of the two cases, it is not necessary to discuss those cases. It seems to me quite clear that neither section 64 of the Code of Civil Procedure nor Order XXI, rule 55 as amended by this Court can help the appellant.

I would therefore dismiss the appeal.

SRIVASTAVA, C.J.:—I agree. I only wish to add that the important facts which have to be borne in mind are that there was only one attachment of the property in suit by the Subordinate Judge in execution of the appellant's decree of his Court which was afterwards satisfied and that no notice was sent to the sale officer executing that decree for rateable distribution of assets in respect of the second decree obtained by the appellant from the Munsif's Court. I have no doubt that the combined effect of section 64 of the Code of Civil Procedure and the explanation which has been added thereto is to extend the protection of that section to the claimants for rateable distribution against private alienations of property after attachment just as much as to the decree-holder at whose instance the attachment is made. It follows from this that Gopi, notice of whose application for rateable distribution had been given to the sale officer, was entitled to the protection of section 64.

Stress was laid on behalf of the appellant on the Subordinate Judge's order, exhibit 9, passed after the judgment-debtor had deposited the amount due to the appellant under the decree of that Court. This order was to the effect that the property was released from attachment in Bismohan's (appellant's) case and that it was to be deemed under attachment in Gopi's decree. This order was in consonance with the provisions of Order XXI, rule 57, as amended by this Court. But the attachment which was continued under this order came to an end when Gopi's application was dismissed for default.

It seems quite clear that the appellant cannot derive any benefit from the provisions of Order XXI, rule 55,

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as amended by this Court, because notice of the appellant's application for execution of the subsequent decree obtained by him from the Munsif's Court was never sent to the Subordinate Judge as required by that rule. The effect therefore of the dismissal of Gopi's application was to put an end completely to the attachment which had been made by the Subordinate Judge and which had enured for the benefit of Gopi in spite of the appellant's decree of the Subordinate Judge's Court having been satisfied. In the circumstances the appellant cannot claim the protection of section 64 in respect of his later decree of the Munsif's Court when no attachment was ever made in execution of that decree, nor was any claim for rateable distribution in respect of it notified to the Subordinate Judge.

In this view of the case it is unnecessary to discuss the further question whether any claim for rateable distribution arises when no assets have come into the hands of the Court.

For the above reasons I agree that the appeal should be dismissed with costs.

Appeal dismissed.