

whether the appointment of a Receiver is just and convenient in the present case. On this point learned counsel for the appellant has really had almost nothing to say. He suggested with some hesitation that clause (2) of rule 1 of order XL, might be applicable, but we are clear that that subclause has no application to a party to the case.

It is true that the learned Civil Judge has omitted to discuss all these points in his order, but in the light of the arguments, which have been put before us, we are satisfied that this was a case in which the appointment of a Receiver was just and convenient from the point of view both of the decree-holders and the judgment-debtor, and that the application has been opposed by the judgment-debtor with the sole object of trying to put off the evil day, if not entirely to avoid compliance with the compromise decree to which he originally submitted.

We find no force whatever in this appeal and dismiss it accordingly with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

MST. ANANDEI (DEFENDANT-APPELLANT) *v.* LALA RAM
(PLAINTIFF-RESPONDENT)*

Civil Procedure Code (Act V of 1908), section 64 and order 21, rules 58 and 63—Attachment of property—Claim under order 21, rule 58, Civil Procedure Code allowed—Suit under order 21, rule 63, decreed—Alienations after allowance of claim under order 21, rule 58, validity of—Transfer of Property Act (IV of 1882), section 52—Lis Pendens, rule of.

An order for release from attachment in a case under order 21, rule 58, Civil Procedure Code does not put an end to the attachment so as to leave the claimant free to deal with the property as he likes and if a suit is brought by the decree-holder under order 21, rule 63. to establish his right and it is decreed the effect of the decree is to set aside the order of

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*Second Civil Appeals Nos. 429 and 430 of 1936, against the order of R. F. S. Baylis, Esq., I.C.S., District Judge of Lucknow, dated the 30th of July, 1936.

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release and to maintain *uninterrupted* the attachment originally made. Any transfer of the attached property by the claimant under order 21, rule 58 and transfers by such transferee to others are void under the provisions of section 64 of the Code of Civil Procedure against the claims of the decree-holder under the attachment. *Protap Chandra Gope v. Sarat Chandra Gangopadhyaya* (1), relied on.

A suit brought under order 21, rule 63, Civil Procedure Code, is a mere continuation of the proceedings in a claim petition under order 21, rule 58 and all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought under order 21, rule 63, to set aside the order passed on the claim petition are affected by the doctrine of *lis pendens*. *Krishnappa Chetty v. Abdul Khader Sahib* (2), relied on.

Messrs. *Radha Krishna Srivastava* and *Hargobind Dayal Srivastava*, for the Appellant.

Messrs. *Lakshmi Shankar Misra* and *Rameshwar Dayal*, for the Respondent.

ZIAUL HASAN, J.:—These are appeals against decrees of the learned District Judge of Lucknow in two suits filed by the two respondents to the two appeals respectively, each claiming possession of a house and a declaration that the house was not liable to attachment and sale in execution of the decree of the present defendant-appellant against defendant No. 4.

Both the suits were tried together and decreed by the trial court. The appeals brought by the present appellant were also disposed of together by the learned District Judge who confirmed the decrees of the trial court. I have also heard both the appeals together and this judgment will govern both of them.

The facts of the case are that one Mst. Ramdei was owner of the two houses in question in the present suits. On the 12th November, 1929, she made a gift of these houses to her daughter Mst. Ram Piari, respondent No. 4 in appeal No. 430. On the 3rd January, 1931, Ram Piari obtained a loan of Rs.1,000 from the present appellant, Mst. Anandei on a promissory note. On the

(1) (1921) A.I.R., Cal., 101.

(2) (1915) I.L.R., 38 Mad., 535.

1st March, 1932, Mst. Anandei obtained a money decree for Rs.1,055 and costs against Ram Piari on foot of the promissory note. On the 2nd September, 1932, Ram Piari transferred the houses back to her mother, Mst. Ramdei. On the 5th November, 1932, the houses were attached by Mst. Anandei in execution of her decree and Ramdei brought an objection under order 21, rule 58, Civil Procedure Code. This objection was allowed by the Munsif, North Lucknow, on the 7th January, 1933. Two days later Ramdei sold both the houses to Gur Prasad, respondent No. 2, of appeal No. 430. Gur Prasad sold one of the houses to Shiam Lal, respondent No. 1, of appeal No. 430, on the 19th January, 1933, and the other to Lala Ram respondent in appeal No. 429 on the 6th September, 1933.

On the 19th August, 1933, Anandei appellant brought a suit under order 21, rule 63, against Ram Piari and Ramdei for a declaration that the houses were liable to attachment and sale in execution of her decree against Ram Piari. In this suit Gur Prasad Shiam Lal and Lala Ram were not impleaded. The suit was decreed on the 3rd October, 1933. Thereafter Anandei put the houses to sale and purchased them herself. Shiam Lal and Lala Ram objected to delivery of possession to the purchaser but their objections were dismissed and possession delivered to Mst. Anandei. Thereupon the suits which have given rise to these appeals were filed by Shiam Lal and Lala Ram. In fact Lala Ram brought his suit on the 20th July, 1935, a week before delivery of possession to Mst. Anandei and he prayed that the order of the Munsif dismissing his objection and ordering delivering of possession to the auction purchaser be cancelled. Shiam Lal's suit was brought on the 23rd August, 1935.

The trial court holding that the decree obtained by Mst. Anandei on the basis of the promissory note against Ram Piari and the decree obtained by Mst. Anandei in the suit under order 21, rule 63 were both collusive.

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decreed both the suits. Mst. Anandei appealed to the District Judge and the learned Judge while disagreeing with the findings of the trial court about the collusive nature of the decree dismissed the appeals and upheld the trial court's decree in favour of the plaintiffs on the ground that as the plaintiffs were not made parties to the suit brought by Anandei under order 21, rule 63, Civil Procedure Code their rights were not affected. Mst. Anandei brings these appeals against the decrees of the learned District Judge.

I am of opinion that both these appeals must be decreed. The learned District Judge has relied on a remark made by their Lordships of the Calcutta High Court in *Protap Chandra Gope v. Sarat Chandra Gangopadhyaya* (1) to the effect that a person who has derived title to the disputed property from the claimant (under order 21, rule 58) subsequent to the order of release (of attachment) must also be made a party (to a suit under rule 63) if it is intended to bind him by the result of the suit. The question however is not whether or not the plaintiffs-respondents are bound by the decree obtained by Mst. Anandei in her suit under order 21, rule 63 but the real question is whether they can claim title to the houses in suit by virtue of their purchases from Gur Prasad as against the appellant auction purchaser. On this point section 64 of the Code of Civil Procedure and section 52 of the Transfer of Property Act are both against them. It is not disputed that as held in the case of *Protap Chandra Gope v. Sarat Chandra Gangopadhyaya* (1) relied on by the learned counsel for the respondents himself, the order for release from attachment in a case under order 21, rule 58 of the Code of Civil Procedure does not put an end to the attachment so as to leave the claimant free to deal with the property as he likes and that if a suit is brought by the decree-holder to establish a right to attach the property and a decree is passed

(1) (1921) A.I.R., Cal., 101.

in his favour, the effect of the decree is to set aside the order of release and to maintain *uninterrupted* the attachment originally made. This being so, the transfer of the house by Ramdei to Gur Prasad and by Gur Prasad to the present respondents would be void under the provisions of section 64 of the Code of Civil Procedure against the claims of the present appellant under the attachment. The argument of the learned counsel for the respondents that section 64 of the Code would have effect only in case the plaintiffs-respondents had been made parties to her suit by Mst. Anandei is to my mind absolutely without force.

Mulla in his commentary on order 21, rule 60 also says—

“But in the case of immovable property if a suit is brought by the decree-holder to establish his right to attach the property and the decree is in his favour, it has the effect of setting aside the order of release and of maintaining the attachment originally made. The result is that any private transfer of property by the claimant, though made after an order under this rule releasing the property from attachment, will be void under section 64, if the right to attach is subsequently established by suit under rule 63.”

Then, the *lis* commenced by Ramdei bringing an objection under order 21, rule 58, Civil Procedure Code, cannot to my mind be said to have terminated before Anandei's declaratory suit was decided so that the transfers made by Ramdei and Gur Prasad contravened the provisions of section 52 of the Transfer of Property Act also. This is to my mind clear from the explanation attached to section 52 of the Transfer of Property Act and I am supported in this view by the decision of their Lordships of the Madras High Court in *Krishnappa Chetty v. Abdul Khader Sahib* (1) in which it was held that a suit brought under order 21 rule 63, Civil Procedure Code, is a mere continuation of the proceedings in a claim petition and all alienations during the continuance of the proceedings originated by the claim petition till the disposal of the suit brought

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to set aside the order passed on the claim petition are affected by the doctrine of *lis pendens*.

In view of what I have said above, the learned District Judge was not right in holding that the plaintiffs-respondents could claim a valid title to the houses in dispute as against the appellant-decree-holder.

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I therefore decree both the appeals with costs and setting aside the decrees of the learned District Judge dismiss both the suits with costs.

Appeals allowed.

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*Before Mr. Justice Ziaul Hasan and Mr. Justice
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KHAN BAHADUR MOINUL MULK MATINUZZAMAN
KHAN AND OTHERS (APPELLANTS) v. MR. H. HUNTER,
LIQUIDATOR, BANK OF UPPER INDIA LTD. AND OTHERS
(RESPONDENTS)*

Indian Trusts Act (II of 1882), sections 9 and 11—Interest—Trustee's liability to pay interest on interest-bearing debts—Trust for payment of specified debts—Trustees, if can pay debts not specified in the deed of trust—Section 9, Trusts Act, whether an enabling or disabling section—Beneficiary setting up claim inconsistent with the Trust, whether loses his right under the Trust—Trust, whether can fail for want of trustees—Mortgage suit—Equity of redemption not represented in a mortgage suit—Decision, whether binds persons representing the equity of redemption.

In a mortgage suit it is the manifest duty of the plaintiff to take steps to bring on record the equity of redemption but not having done so the decree obtained by him in his suit is a nullity as against those who represent the equity of redemp-

*First Civil Appeals Nos. 55, 66, 89, 97, 99, 131, 132 and 133 of 1936, against the decree of Babu Bhagwat Prasad, Additional Subordinate Judge of Lucknow, dated the 28th March, 1936.