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KESARI-CHAND JOHAR MULL v. MUKTESWAR TRIGUNAIT.

KULWANT SAHAY, J.

March, 1923, was an endorsement within the meaning of the proviso to section 20 of the Indian Limitation Act which saved the suit from limitation. As was pointed out by the Full Bench in the Calcutta case referred to above, the object was to secure an evidence in the writing of the person making the payment and not to rely upon mere oral evidence as regards payment. The signature of the person making the payment upon the cheque drawn by him is the best evidence in writing as regards the payment made by the person making the same.

The result, therefore, is that it must be held that the suit of the plaintiff is not barred by limitation and he is entitled to a decree for Rs. 626-9-9; he is also, in my opinion, entitled to simple interest by way of compensation at the rate of one per cent. per month, from the 28th March, 1923, up to the date of the suit, and thereafter interest at six per cent. per annum on the total amount, principal with interest, that may be found due on taking account. I would, therefore, allow this appeal and make a decree in favour of the plaintiffs for the sum stated above. The plaintiffs would be entitled to proportionate costs in this Court as well as in the Court below.

ADAMI, J. I agree.

Appeal allowed.

APPELLATE CIVIL.

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March, 8, 28.

Before Macpherson and Fazl Ali, JJ.

NAGAR MULL

v.

BENARES BANK LTD.*

Attachment, when becomes effective—subsequent transfer, when invalidated—processes, service of, necessary—Code of Civil Procedure, 1908 *(Act V of* 1908*), Order XXI, rule* 54.

*Appeal from Original Order no. 25 of 1929 with Civil Revision no. 308 of 1929, from an order of Babu Shivanandan Prasad, Subordinate Judge of Muzaffarpur, dated the 7th January, 1929.

An attachment is not effective to invalidate a subsequent transfer unless first, the order for attachment has been issued and secondly, all processes which are necessary under the law to effect a valid attachment have been served before such subsequent transfer.

Muthiachetti v. *Palaniappa Chetti*(1) *and Lala Hiralal* v. *Munshi Jagatpati Sahay*(2), followed.

Venkatasubbiah v. *Venkata Seshaiya*(3), not followed.

Appeal by the decree-holders.

The facts of the case material to this report are stated in the judgment of Fazl Ali, J.

T. N. Sahai, for the appellants.

S. K. Mitra and *A. M. Guha*, for the respondents.

FAZL ALI, J.—The Miscellaneous First Appeal no. 25 and Civil Revision no. 308 of 1929 have been heard together as they are both directed against the decision of the Subordinate Judge of Muzaffarpur, dated the 7th January, 1929, releasing certain properties from attachment at the instance of the Benares Bank, one of the respondents. It appears that Nagar Mull and others obtained a money decree against Lakhinath and others on the 22nd May, 1923. While the suit was pending the Benares Bank instituted another money suit against Lakhinath and had certain properties belonging to the latter attached before judgment, the order of attachment being passed on the 17th December, 1923. Lakhinath appealed to the High Court against the decree and during the pendency of the appeal Nagar Mull and others applied for the execution of the decree. On the 3rd January, 1924, Lakhinath obtained an order from the High Court directing the execution to be stayed provided that Nagar Mull furnished security to the satisfaction of the lower Court. On the 14th January 1924, and 16th January, 1924, the judgment-debtors furnished security and the execution was stayed.

(1) (1928) 32 Cal. W. N. 821, P. C. (2) (1928) I. L. R. 8 Pat. 1.
(3) (1918) I. L. R. 42 Mad. 1.

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Meanwhile the suit instituted by the Benares Bank being decided in their favour they took out execution of the decree passed by the Court in their favour and purchased some of the properties which had been included by Lakhinath in his security bonds of the 14th and 16th of January. Nagar Mull and others also succeeded in the appeal which had been preferred by Lakhinath in the High Court and they also executed their decree and applied for the sale of the properties which had been given in security by Lakhinath. As the Benares Bank had purchased four out of five properties included in the security bond, they were also impleaded as judgment-debtors in column 9 of the execution petition filed by Nagar Mull and others on the ground that they might have an

> "opportunity to pay off the lien of the petitioners on the properties purchased by them."

The Benares Bank, Ltd. appeared and objected, two of their objections being that the security bonds relied on by the decree-holders were inoperative against them and that the case did not come under section 47 of the Civil Procedure Code.

The learned Subordinate Judge held among other things that as the order of attachment before judgment had been passed by the Court in the suit brought by the Benares Bank before the security bonds were executed by Lakhinath and others in favour of the decree-holders, the latter were not binding upon the Benares Bank. He also held that the Bank was not a representative of the judgment-debtor and, therefore, was not a necessary party to the application for execution. The objection of the Benares Bank was thus allowed and the properties purchased by the Bank were released from attachment.

Now, the main question which was raised before us on behalf of the appellants was that the learned Subordinate Judge was entirely wrong in holding that merely because the order of attachment was passed

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before the security bonds had been executed, the Benares Bank could purchase the property free of all charge, and reliance was placed on the decision in *Muthiachetti* v. *Palaniappa Chetti*(1) in which the following observations were made by the Judicial Committee—

"In view of these provisions the Board listened with some surprise to a protracted argument which culminated in the proposition that a property was in law attached whenever an order for attachment was made. The result, if this were so, would be that a person holding an order could dispense with attachment altogether as an operation or a fact. Their Lordships need not repeat in another form this proposition. The order is one thing, the attachment is another. No property can be declared to be attached unless first, the order for attachment has been issued and secondly, in execution of that order the other things prescribed by the rules in the Code have been done."

Reliance was also placed on a decision of this Court in *Lala Hiralal* v. *Munshi Jagatpati Sahay*(2) where it was held that "in the case of land paying revenue to Government an attachment is not effective to invalidate a subsequent transfer unless and until a copy of the order of attachment has been affixed in the office of the Collector of the district in which the land is situate in compliance with the requirements of Order XXI, rule 54 of the Civil Procedure Code of 1908."

Now the authority of those decisions has not been questioned by the learned Advocate for the respondents, nor is it possible to question them, and that being so, there can be no doubt that it was the duty of the learned Subordinate Judge to have investigated the question as to whether all the processes of attachment which are necessary under the law to effect a valid attachment had been served

(1) (1928) 32 Cal. W. N. 821, P. C. (2) (1928) I. L. R. 8 Pat. 1.

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and if so, whether they were served before the security bonds had been executed in favour of the appellants or after it. Unfortunately the learned Subordinate Judge did not investigate this question but proceeded on the view which was propounded by the Madras High Court in the case of *Venkatasubbiah* v. *Venkata Seshaiya*(1) that an attachment order before judgment invalidates an alienation made after the property is actually attached in pursuance of the order even though the actual attachment was made after the passing of the decree. This view, however, can no longer be held to be correct in view of the decision of the Judicial Committee in the case to which I have just now referred. The position, therefore, is that neither the parties to the case nor the Subordinate Judge has directed their attention to the main point which arose in the case and which I have already indicated. In fact there is no evidence whatsoever as to whether a copy of the order of attachment was or was not affixed in this case in the office of the Collector of the district as provided under Order XXI, rule 54. It also appears that although the various writs of attachment were tendered in evidence in the case and they bear certain endorsements as regards how and when the service was effected by the peon, no one has been examined to prove formally the service. Thus there is no legal evidence before us to determine as to whether the attachment had been completed before or after the security bonds were executed. As the learned Subordinate Judge as well as the parties were probably misled in the matter in consequence of the view of law set out by the Madras High Court, I think it is necessary in the interest of justice that the order of the lower court should be set aside and this case should be remanded to the Court below for disposal according to law. The lower Court will enable the parties to adduce such further evidence as may be necessary to prove whether the attachment relied

(1) (1918) I. L. R. 42 Mad. 1.

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upon by the Benares Bank was valid or otherwise and whether it affected in any way the security bonds executed in favour of the appellants. The question whether the objection of the Benares Bank was one made under section 47 of the Civil Procedure Code or not and whether an appeal or a revision lies to this Court is not decided because there is an appeal as well as a revision before us and we think that in any view the order of the Subordinate Judge ought to be vacated. Costs will abide the result.

FAZL ALI, J.

MACPHERSON, J.—I agree.

Order set aside.

MISCELLANEOUS CIVIL.

Before Jwala Prasad and Ross, JJ.

1930.

April, 1, 11. July, 7.

BABUI RADHIKA DEBI

v.

RAMASRAY PRASAD CHAWDHRY.*

Legal Practitioners Act, 1926 (Act XXI of 1926), sections 3 and 4—Advocate, appointment of, when and how determined—Courts, discretion to refuse permission—Code of Civil Procedure, 1908 (Act V of 1908), Order III, rule 4—Advocate's services dispensed with—Advocate, whether entitled to full costs—measure of compensation—Legal fee taxable under the Rules of High Court—fee, whether should be divided equally amongst Advocates engaged—Advocates, names of, mentioned in Vakalatnama—acceptance, whether necessary—quantum meruit, principle of—remuneration before termination of litigation—Court's discretion to reduce the legal fee payable.

Order III, rule 4, Code of Civil Procedure, 1908, lays down:

"(1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorised by power-of-attorney to act in this behalf.

*In the matter of an application in First Appeal no. 168 of 1927.