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PRATT, J.

attachment was *ipso facto* determined and the Court had no longer any jurisdiction to try the claim case."

I have no doubt that this is sound law.

It is obvious that respondent has a remedy under Rule 100, if dispossessed, or that he may resist the auction-purchasers taking possession under Rule 97, if he has no cause of action under Rule 90.

I hold that the order of the Township Court was without jurisdiction and set it aside accordingly. Applicant will be allowed costs. Advocate's fees two gold mohurs.

APPELLATE CIVIL.

Before Mr. Justice Pratt.

MAGANLAL PARBHURAM
v.
N. A. AZIZ HAJI KARIM AND SIX.*

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Civil Procedure Code (Act V of 1908), s. 73, O. 38—Deposit of money into Court by defendant to avoid attachment before judgment, effect of—Right of plaintiff to such money on obtaining decree—Claims of other creditors before judgment.

Held, that where money is deposited by the defendant in Court in order to avoid attachment before judgment and he does not contest the suit, the money may be taken as paid towards the satisfaction of the plaintiff's claim who has a lien on it and is entitled to withdraw the money in full and has priority over other creditors who attached the money in Court before plaintiff obtained his decree. Such money was not liable to rateable distribution.

Ramiah v. *Gopalier*, 41 Mad. 1053 ; *Sorabji* v. *Kala*, 36 Bom. 156—*followed*.

A. C. Mukerjee—for Appellant.

S. Mukerjee—for Repondents.

PRATT, J.—In Civil Regular Suit No. 313 of 1926 of the Subdivisional Court, Mandalay, Maganlal Parbhuram sued Maung San Lon for Rs. 1,593-12 principal and interest on a promissory note.

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* Civil Second Appeal No. 81 of 1927 (Mandalay).

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MAGANLAL PARBHUDAS v. N. A. AZIZ HAJI KARIM AND SIX.

PRATT, J.

On the 31st July 1926 plaintiff applied for attachment before judgment of a sum sufficient to satisfy the decree from the price of a house due by one Charan Das to the defendant and for a prohibitory order restraining the defendant from receiving the amount.

An attachment order was issued in wholly wrong form to defendant and Charan Das jointly directing them to hold the sum of Rs. 1,790-12 subject to the further orders of the Court.

On the order being served defendant paid up the sum of Rs. 1,790-12 and the bailiff returned the warrant with an endorsement that it had been duly executed. (*Vide* Civil Miscellaneous No. 57 of 1926 of the Sub divisional Court.)

Whilst the money was still in Court various creditors attached it before judgment.

Plaintiff obtained an *ex parte* decree on the 12th August and applied for payment of the money paid into Court by defendants.

Objections were made and ultimately the money was distributed rateably between various decree-holders.

Plaintiff then in Suit No. 452 of 1926 of the same Court sued for a declaration that the sum of Rs. 1,790-12 held in Court to the credit of his Suit No. 313 was not liable to rateable distribution and that plaintiff alone was entitled thereto. His suit was dismissed.

Both the lower Courts have held that the money was attached before judgment and that therefore plaintiff had no prior lien.

Their findings are undoubtedly correct, on the assumption that the money in question was attached before judgment, but it seems perfectly clear to me that the money was not attached. As I have already pointed out the order of attachment was in wrong form.

There was no order to furnish security as there should have been under Order 38, Rule 5, and none was asked, neither was there any direction to pay the money into Court.

Instead of holding the money at the disposal of the Court as directed, defendant paid the money into Court. He never contested the suit. It is obvious therefore that the money was paid towards satisfaction of plaintiff's claim and order to avoid an attachment before judgment.

None of the conditions necessary to constitute an attachment under Order 38, Rule 5, have been complied with.

The money must be considered as a deposit in satisfaction of the plaintiff's claim under Order XXIV, Rule I, and plaintiff was entitled to have it paid out to him in satisfaction of his claim on application without taking out execution of his decree.

As soon as it was paid to the bailiff the money ceased to be an asset in the hands of the defendant.

It must be taken as settled law that under the circumstances plaintiff had a prior lien on the money and it was not liable to rateable distribution.

There is a wealth of case law on the subject both English and Indian.

It is only necessary to refer to two Indian cases.

In *Sorabji* v. *Kala* (1), the immovable property of a judgment-debtor was attached at the instance of two judgment-creditors and his other judgment-creditors merely put in applications for execution without attaching.

On the day fixed for sale of the property the decrees of the two attaching judgment-creditors were satisfied by payment in Court of the decretal amounts,

(1) (1911) 36 Bom. 156.

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and the effect was the withdrawal of the attachment under Order XXI, Rule 55.

On the day following the payment into Court on an *ex parte* application an order was made for rateable distribution of the money paid into Court.

It was held on appeal by a Bench of the Bombay High Court that the monies, which were paid in to satisfy the attaching creditors' decrees and to raise the attachment could not be treated as assets by the Court and were not distributable among other judgment-creditors, who had merely applied for execution.

The facts here are not the same as in the case under appeal, but the principle involved is.

The whole subject is discussed at length in *Ramiah Aiyar* v. *Gopalier* (1), which might almost be called the *locus classicus* on the point. The facts were that the defendant was arrested before judgment and was ordered to be released from custody on his paying into Court sufficient to meet plaintiff's claim. The money was subsequently attached by a decree-holder and defendant was adjudicated an insolvent.

It was held by a Bench of the Madras High Court that the money was paid into Court to the general credit of the action and was charged with a lien in favour of the plaintiff on the latter obtaining a decree in his favour. It was further held that the attaching-creditors' and the Official Receiver's claims were subject to this lien.

As Courts Trotter, J., observed in the course of his judgment :—"Where money is paid to the credit of the suit or ear-marked for the suit, the Courts have always held that, when that is done, the money belongs to the plaintiff in the event of his success and that it cannot pass to the general creditors of the person

(1) (1918) 41 Mad. 1053.

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who pays it in or to any person who claims under him."

The case is clearly distinguishable from one in which defendant gives security for his appearance. Such security would be merely conditional for his appearance in Court and would not be ear-marked for the purposes if the suit.

PRATT, J.

Plaintiff was on this view clearly entitled to the declaration sought and to satisfy his decree from the money paid in towards his claim.

I set aside the findings and decrees of the lower Courts and grant plaintiff a decree as prayed with costs throughout.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

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July 28.

C.R.M.A. CHETTYAR FIRM
v.
K.R.S.V. CHETTYAR FIRM AND THREE.*

Civil Procedure Code (Act V of 1908), s. 73—"Same judgment-debtor," meaning of—Court to which application for execution should be made—Mode of application—Mere transfer of records to executing Court whether sufficient.

Held, that all the decree-holders (who have otherwise complied with the provisions of section 73 of the Civil Procedure Code), where there are common judgment-debtors in all the execution cases, are entitled to participate rateably in the distribution of the assets according to the interest of the respective judgment-debtors in the property sold. It is not necessary that all the judgment-debtors of all the decree-holders should be identical and also neither more nor less.

Held, also, that the requirements of the section are not complied with if no application is made to the Court that holds the assets and merely the records of the cases of decree-holders of another Court are forwarded to the former Court to which no decrees are transferred for execution and to which no applications for rateable distribution are made.

Chhotalal v. *Nabibhai*, 29 Bom. 528; *Gonesh Das* v. *Shiva Laksman*, 30 Cal. 583; *Krishnashankar* v. *Chandrashankar*, 5 Bom. 198; *Ramanathan Chettiar* v. *Subramania Sastrial*, 26 Mad. 179; *Sit Saing* v. *Maung Po Kaing*, 1 L.B.R. 121—*referred to.*

* Civil Revision No. 345 of 1927.