

APPELLATE CIVIL.

Before Mr. Justice Martineau and Mr. Justice Harrison.

RAM BHAJ DATTA, VENDEE (DEFENDANT)—*Appellant,*
versus

RAM DAS, DECREE-HOLDER (PLAINTIFF) AND
MAHTAB DIN, JUDGMENT-DEBTOR (VENDOR)
(DEFENDANT)—*Respondent.*

Civil Appeal No. 987 of 1919.

Attachment of Property—whether it confers a title on the attaching creditor—purchaser of attached property takes it as it is at the time of sale and subject to liabilities and equities then existing—Transfer of Property Act, IV of 1882, section 132.

On the 26th July 1917 a debt due from A to B was attached in execution of a decree obtained by C against B. This debt amounted to Rs. 2,818 and was part of the purchase money of a house and a shop which B had sold to A. The debt was sold by auction and purchased by C for Rs. 1,000 on the 29th April 1918. C sued A for the recovery of the balance of Rs. 1,818. A claimed a set off on account of the rent of the house which was due to him from B, who had taken the house on lease from some mortgagees whom A had paid off.

Held, that an attachment creates no charge on the attached property, and confers no title on the attaching creditor, but merely prevents a private alienation of the property.

Moti Lal v. Karrabuddin (1), and *Raghunath Das v. Sundar Das* (2), followed.

What C bought was the debt due from A to B at the date of the sale, and not at the date of attachment, and in accordance with the principles laid down in section 132 of the Transfer of Property Act he bought it subject to the liabilities and equities to which B was subject in respect of the debt at that time. A was therefore entitled to set off against the debt due to B the amount that was due to him from B for rent at the time of the sale.

Arunachellam v. Subramanian (3), followed.

(1) (1897) I. L. R. 25 Cal. 179 (P. C.). (2) (1914) I. L. R. 42 Cal. 72 (P. C.).
(3) (1906) I. L. R. 30 Mad. 235.

Second appeal from the decree of N. H. Prenter, Esquire, District Judge, Lahore, dated the 13th February 1919, varying that of Khan Sahib Sheikh Rahim Bakhsh, Subordinate Judge, 1st Class, Lahore, dated the 26th August 1918, and altering the decretal amount.

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DEV RAJ SAWHNEY AND TEK CHAND, for Appellant.

JAI GOPAL SETHI, for Respondents.

The judgment of the Court was delivered by—

MARTINEAU J.—On the 26th July 1917 a debt due from Ram Bhaj Datta to Mahtab Din was attached in execution of a decree obtained by the plaintiff against Mahtab Din. This debt amounted to Rs. 2,818 and was part of the purchase money of a house and a shop which Mahtab Din had sold to Ram Bhaj Datta. The debt was sold by auction and was purchased by the plaintiff for Rs. 1,000 on the 29th April 1918. The plaintiff now sues Ram Bhaj Datta for the recovery of the balance of Rs. 1,818. Ram Bhaj Datta claims a set off on account of the rent of the house which was due to him from Mahtab Din, who had taken the house on lease from some mortgagees whom Ram Bhaj Datta paid off.

The Subordinate Judge allowed the set off to the amount of Rs. 1,772-9-8 on account of rent due from the 26th June 1917 to the 30th September 1918 and passed a decree for only Rs. 45-6-4. On appeal by the plaintiff the District Judge held that what was sold on the 29th April 1918 was the debt as it existed at the time of attachment, and that, therefore, Ram Bhaj Datta was entitled to a set off only of the amount due to him for rent at that time, which was only Rs. 116-14-0. He accordingly enhanced the amount of the decree to Rs. 1,701-2-0. Ram Bhaj Datta has filed a second appeal in this Court.

We cannot agree with the view taken by the learned District Judge. An attachment creates no charge on the attached property and confers no title on the attaching creditor, but it merely prevents a private alienation of the property [see *Moti Lal v. Karrabuddin* (1) and *Raghnath Das v. Sundar Das* (2)]. Property attached may deteriorate in value or become entirely worthless before the date of the sale, and it cannot pos-

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sibly be said that what is sold is the property in the condition in which it was at the time of the attachment. What the plaintiff bought in the present case was the debt due from Ram Bhaj Datta to Mahtab Din as it existed at the time of the sale, and in accordance with the principle laid down in section 132 of the Transfer of Property Act he bought it subject to the liabilities and equities to which Mahtab Din was subject in respect thereof at that time. Ram Bhaj Datta is, therefore, entitled to set off against the debt due to Mahtab Din the amount that was due to him from Mahtab Din for rent at the time of the sale. *Arunachellam v. Subramanian* (1) which is cited by the Subordinate Judge is in point.

We cannot agree with the argument advanced for the respondents that Mahtab Din ceased to be a tenant when the house was purchased by Ram Bhaj Datta, and that the sum of Rs. 116-14-0 found by the lower appellate Court to be due from him on the date of the attachment was due to the mortgagees on account of interest. It was in fact admitted by the parties in the lower appellate Court that Rs. 116-14-0 were due on that date as rent. Mahtab Din no doubt remained in occupation of the house after Ram Bhaj Datta had asked him to vacate, as pointed out by the learned District Judge, who has referred to letters which Mahtab Din wrote on the subject, but it is clear that Mahtab Din continued to be a tenant, though the term of the lease originally granted by the mortgagees had expired and he was holding over. In a letter of the 26th June 1917 he promised to pay Ram Bhaj Datta the same rent which he had agreed to pay to the mortgagees, and in a letter of the 24th July 1917 he agreed that if he remained in the house after the 1st October 1917, he would pay rent for a whole year, and that Ram Bhaj Datta could deduct the rent from the money due to him. We think that in the circumstances Ram Bhaj Datta was rightly allowed by the first Court to set off the amount of the rent due from the 26th June 1917 to the 30th September 1918.

We accept the appeal, set aside the decree of the lower appellate Court, and restore the decree of the first Court. The plaintiff will pay the appellant's costs in this Court and in the lower appellate Court.

A. B.

Appeal accepted.