

concurrent findings of both the lower Courts. I would accordingly follow the decision of the learned District Judge for the reasons which he has given and dismiss this appeal with costs.

JAI LAL J.—I agree.

A. N. C.

1928  
RAM DITTA  
v.  
MST. UDHAMI.

JAI LAL J.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Harrison and Mr. Justice Tek Chand.*

JAGEY RAM AND OTHERS (PLAINTIFFS) Appellants;  
*versus*

RICHHPAL, DECREE-HOLDER } (DEFENDANTS)  
NATHWA, JUDGMENT-DEBTOR } Respondents.

1928  
Oct. 2.

Civil Appeal No. 943 of 1925.

*Declaratory Suit—by heirs of Mortgagor to the effect that a mortgage decree against the latter will not affect their reversionary rights—Limitation—Attachment of mortgaged property in execution of the decree—whether gives a fresh cause of action for the suit.*

The sons and grandsons of a certain mortgagor brought a suit for a declaration regarding a decree based on a mortgage passed against their father and grandfather, and the suit was barred by time unless the attachment in execution created a fresh cause of action.

*Held, following Chet Ram v. Spedding and Co. Ltd. (1), that attachment in itself gives no cause of action for a suit by reversioners of this nature, inasmuch as no title passes in virtue of the attachment, nor is any charge created upon the property.*

*Sant Ram v. Ganga Ram (2), not followed.*

*Second appeal from the decree of D. Johnstone, Esquire, District Judge, Delhi, dated the 19th January 1925, affirming that of Sayyad Rafiq Ahmad, Subordinate Judge, 4th class, Delhi, dated 8th April 1924, dismissing the plaintiffs' suit.*

(1) (1923) 5 Lah. L. J. 234.

(2) 32 P. R. 1904.

1928

JAGEY RAM

v.

RICHHPAL.

HARRISON J.

NANWAN MAL, for Appellants.

SHAMAIR CHAND, for Respondents.

## JUDGMENT.

HARRISON J.—This appeal was admitted to a Division Bench because of the conflict between *Sant Ram v. Ganga Ram* (1) and *Chet Ram v. Spedding and Co. Ltd.* (2), to which my attention was drawn by counsel for the appellants, the District Judge having followed the later ruling. There is no dispute regarding the facts. The sons and grandsons of a certain mortgagor brought a suit for a declaration regarding a decree based on a mortgage passed against their father and grandfather, and this was barred by time unless the attachment in execution created a fresh cause of action. In the first place, no attachment is necessary when there is a properly drawn up mortgage decree, which clearly directs that the property shall be sold. In the second place, it appears to us very clear that, as laid down in *Chet Ram v. Spedding and Co. Ltd.* (2), and for the reasons detailed therein, attachment in itself gives no cause of action for a suit by reversioners of this nature, inasmuch as no title passes in virtue of the attachment, nor is any charge created upon the property. There are two small differences between the present case and *Sant Ram v. Ganga Ram* (1), but these do not affect the main question. We hold, that so far as there is any conflict between these two rulings, *Chet Ram v. Spedding and Co. Ltd.* (2), prevails and, following it, I dismiss this appeal with costs.

TEK CHAND J.

TEK CHAND J.—I agree.

A. N. C.

*Appeal dismissed.*

(1) 32 P. R. 1904.

(2) (1923) 5 Lah. L. J. 234.