

and the plaintiff-pre-emptor cannot proceed with his suit for pre-emption.”

We have quoted these words to show that the position was accepted by counsel on both sides. The trial Court held that the decree was collusive, the lower appellate Court held that it was not collusive, that is to say, that it was genuine and *bona fide*. There are numerous rulings on the point that a question of good faith, which is the opposite of collusion, is a question of fact, and it will be sufficient to mention in this connection three decisions of this Court, namely, *Abdul Samad v. Municipal Committee of Delhi* (1), *Jaishi Ram v. Suju* (2) and *Ghasi v. Munga* (3).

For the reasons given above we dismiss this second appeal but makes no order as to costs of this Court.

A. N. K.

Appeal dismissed.

LETTERS PATENT APPEAL.

Before Addison and Ram Lall JJ.

SUKHRAM PHOLLEY (DECREE-
HOLDERS) Appellants,

versus

KANWAL SINGH AND OTHERS (OBJECTORS)
Respondents.

Letters Patent Appeal No. 50 of 1939.

Custom — Just debts — Simple money decree — Ancestral land — attached but not sold during the life time of the judgment-debtor — Whether liable to be sold in the hands of the next holders — Punjab Debtor's Protection Act (II of 1936), S. 9.

(1) 75 P. R. 1916.

(2) (1928) 109 I. C. 776.

(3) 1932 A. I. R. (Lah.) 322.

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Where a male proprietor governed by custom, as in the present case, contracted a just debt and his ancestral landed property was attached but not sold in his life time in execution of a simple money decree against him.

Held, that the land could not be sold in the hands of the next holders under custom.

Held also, that an attachment creates no charge on the attached property and confers no title on the attaching creditor. It merely prevents a private alienation of the property and does not preclude the accrual of the reversionary rights.

Jagdip Singh v. Bawa Narain Singh (1), *Ganpat Rai v. Santa Singh* (2), *Ram Bhaj Datta v. Ram Das* (3), *Moti Lal v. Karrabuldin* (4), *Raghunath Das v. Sundar Das* (5), *Natha v. Ganesha Singh* (6) and *Mussammat Bhambul Devi v. Narain Singh* (7), relied upon.

Teju v. Jethu Mal-Hari Parshad (8) and *Nand Mal-Durga Das v. Nazir Ahmad* (9), referred to.

Letters Patent Appeal from the judgment of Skemp J., dated 17th January, 1939, in Execution Second Appeal No.1189 of 1938, affirming that of Mr. S. S. Dulat, District Judge, Karnal, at Rohtak, dated 21st May, 1938, which affirmed that of Pandit Inder Kishan Wali, Senior Subordinate Judge, Rohtak, dated 20th December, 1937.

FAKIR CHAND MITAL, for Appellants,

BISHAN NARAIN, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The firm Sukh Ram Pholley obtained a simple money decree in 1930 against Giani, a Jat of Tahsil Jhajjar, District Rohtak, for Rs.3,460. Applications for execution were made in 1933 and

(1) 4 P. R. 1913 (F. B.).

(5) I. L. R. (1915) 42 Cal. 72 (P. C.)

(2) 1930 A. I. R. (Lah.) 849.

(6) I. L. R. (1932) 13 Lah. 524.

(3) I. L. R. (1922) 3 Lah. 414.

(7) (1915) 29 I. C. 572.

(4) I. L. R. (1898) 5 Cal. 179 (P. C.)

(8) 1937 A. I. R. (Lah.) 560

(9) 1:39 A. I. R. (Lah.) 168.

1935 and the present application for execution was made on the 8th February, 1936. At that time Giani was alive and 8 *bighas*, 16 *biswas* of agricultural land belonging to him were attached on the 12th March, 1936. The papers were then sent to the office of the Collector to arrange a farm of the land. These proceedings had not been completed when Giani died on the 17th or 18th of April, 1937. His nephews and grand-nephews were brought on the record and they objected that the land could not be alienated after Giani's death as they were governed by custom and the land was ancestral. It was found by the two Courts below that the land was ancestral. They also concurred in holding that the land was exempt from attachment and sale under custom after Giani's death and that section 9 of the Punjab Debtors Protection Act also operated as a bar. There was a second appeal to this Court which was dismissed by a learned Judge, against whose decision this appeal under the Letters Patent has been preferred.

In the Full Bench decision, *Jagdip Singh v. Bawa Narain Singh* (1), it was held that where a male proprietor, governed by customary rules, had contracted a just debt and died leaving ancestral landed property, such property was not liable in the hands of the next holder in respect of such debt, unless the debt had been expressly charged on the property. As a consequence, it was further held that a person who had obtained a simple money decree for such a debt against the debtor himself or his representatives had no right to execute it against ancestral land, once in the debtor's possession, which had passed into the hands of the next holder under customary law. In this Full Bench case

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the land had neither been attached nor sold in the life time of the judgment-debtor.

In the course of this judgment it was said *obiter* that it might perhaps be conceded that attachment of the landed ancestral property during the life-time of the debtor was permissible but it was added that the learned Judges were not at present concerned with that aspect of the question. In the case before us the land had been attached in the life-time of the judgment-debtor and reliance is placed upon this *obiter dictum* by the appellants.

Reliance was also placed on a remark by their Lordships of the Privy Council in *Suraj Bunsai Koer v. Sheo Persad Singh* (1), which is as follows:—

“ They think that, at the time of Adit Sahai’s death, the execution proceedings under which the *mouza* had been attached and ordered to be sold had gone so far as to constitute, in favour of the judgment-creditor, a valid charge upon the land, to the extent of Adit Sahai’s undivided share and interest therein, which could not be defeated by his death before the actual sale.”

In this case before the Privy Council, however, a decree had been obtained against Adit Sahai alone for a certain sum to be realised by the sale of the mortgaged property. This case, is, therefore, distinguishable on the ground that Adit Sahai had charged the joint Hindu family property, belonging to himself and his sons, and it might perhaps be said that, for this reason alone, his share at least was liable for the debt. Further, in the case of co-parceners under Hindu Law it has been held that the undivided interest of a co-parcener, if it is attached in his life-time, may be sold

(1) I. L. R. (1880) 5 Cal. 148, 174. (P. C.).

after his death whether the order for sale is made in his life-time or after his death. This principle might also explain the remark relied upon in the judgment of their Lordships of the Privy Council.

Sukh Dial v. Nazir Ahmad (1) was relied upon by the appellants but it is not very helpful. There the land had been *attached and sold* before the death of the judgment-debtor and it was held that his legal representatives could not, in these circumstances, challenge the sale.

A case, which is on all fours with the present case, is *Ganpat Rai v. Santa Singh* (2), decided by a Division Bench, where it was held that the attachment of ancestral land in the life-time of the original proprietor, for debts due from him, did not create any charge on the property and could not preclude the accrual of the reversionary rights. In this case the learned Judges relied upon *Ram Bhaj Datta v. Ram Das* (3) where it was held that an attachment created no charge on the attached property and conferred no title on the attaching creditor, but merely prevented a private alienation of the property. This proposition follows from *Moti Lal v. Karrabuldin* (4), where it was held that an attachment, which had preceded the institution of the first purchaser's suit, afforded no support to the second purchaser's claim, as attachment under the Civil Procedure Code merely prevented alienation and did not give title; and from *Raghunath Das v. Sundar Das* (5) where it was held that an attachment prevented and avoided any private alienation but did not invalidate an alienation by operation

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(1) I. L. R. (1936) 17 Lah. 799. (3) I. L. R. (1922) 3 Lah. 414.

(2) 1930 A. I. R. (Lah.) 849. (4) I. L. R. (1898) 25 Cal. 179 (P. C.).

(5) I. L. R. (1915) 42 Cal. 72 (P. C.).

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of law such as was effected by a vesting order under the Indian Insolvency Act.

It was again held in *Natha v. Ganesha Singh* (1) that a mere attachment infringed the rights of only the judgment-debtor and had the effect of placing the property attached *in custodia legis*. It did not amount to an infringement of the rights of the reversioners.

Finally, it was held by a Division Bench of the Punjab Chief Court in *Mussammatt Bhambul Devi v. Narain Singh* (2) that an attachment of property did not affect any title therein, but merely prohibited its transfer.

It follows from these authorities that the attachment of the landed property in the life-time of Giani did not confer any title and did not amount to a charge on the property, nor did it affect the rights of the reversioners. As in Rohtak District, under customary law, ancestral land, which has come to the reversioners from a judgment-debtor, is not liable even for the just debts of the judgment-debtor, it follows that the land in the present case could not be farmed under custom in execution of the decree against the judgment-debtor after his death, though it had been attached in his life-time.

The same result follows from section 9 of the Punjab Debtors Protection Act, 1936. The attachment was made in the present case on the 12th March, 1936, and the Punjab Debtors Protection Act came into force on the 6th June, 1936, after the attachment but before Giani's death. Section 9 practically enacts the decision arrived at in the Full Bench case, *Jagdip Singh v. Bawa Narain Singh* (3), and lays down that, when custom is the rule of decision in regard to

(1) I. L. R. (1932) 13 Lah. 524.

(2) (1915) 29 I. C. 572.

(3) 4 P. R. 1913 (F. B.).

succession to immoveable property, then, notwithstanding any custom to the contrary, ancestral immoveable property in the hands of a subsequent holder shall not be liable in execution of a decree or order of a Court relating to a debt incurred by any of his predecessors-in-interest, provided that, when the debt has been expressly charged by mortgage on ancestral immoveable property by a predecessor-in-interest, the Court shall determine the liability of such land as if this section had not been passed. There is a further proviso but it does not help the appellants in any way and need not be set out. Under this section, therefore, there has to be an express charge by mortgage on ancestral land before it can be sold or otherwise disposed of in execution of a decree against a predecessor-in-interest. This makes it quite clear that attachment in the lifetime of the predecessor-in-interest is not sufficient, as attachment does not amount to a charge.

In *Teju v. Jethu Mal-Hari Parshad* (1), when dealing with a similar provision in section 10 as regards standing crops and trees, a learned Judge held that where certain standing trees belonging to the judgment-debtor were attached in execution of a money decree before the Punjab Debtors Protection Act came into force and the trees were ordered to be sold after the Act had come into force, the sale could not take place as it was contrary to section 10, although the attachment was prior to the Act, as such attachment did not create a charge or lien upon the attached property and also conferred no title upon the attaching creditor.

Another authority is *Nand Mal-Durga Das v. Nazir Ahmad* (2) where another learned Judge held

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(1) 1937 A. I. R. (Lah.) 560.

(2) 1939 A. I. R. (Lah.) 165.

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that where the Punjab Debtors Protection Act came into force several weeks before the papers were sent to the Collector to arrange for the lease or farm of the judgment-debtor's land, the liability of the land to attachment and sale was taken away by the new enactment. This is an authority dealing directly with section 9 of the Act. It seems quite clear that section 9 does prohibit the sale or other form of transfer of ancestral property in circumstances like the present, if it has not been effected prior to the 6th June, 1936.

For the reasons given we dismiss this appeal but make no order as to costs before us.

A. K. C.

REVISIONAL CIVIL.

Before Tek Chand and Bhide JJ.

TAJ DIN (DEFENDANT) Petitioner,

versus

ABDUL RAHIM (PLAINTIFF) Respondent.

Civil Revision No. 1009 of 1938.

Transfer of Property Act (IV of 1882), SS. 105 and 107 — Rent-deed — unregistered — for a period of less than a year — executed by the transferee and not the transferor of the interest to be conveyed by the deed — Whether a 'lease' within the meaning of S. 105 of the Transfer of Property Act — Indian Registration Act (XVI of 1908), S. 49 — Rent-deed — Whether admissible in evidence.

The house in dispute, situated within the Municipal limits of Lahore, was mortgaged with possession by the defendant in favour of the plaintiff by a registered deed. The defendant orally took the house on lease after the mortgage and subsequently executed an unregistered *rent-deed* in favour of the plaintiff purporting to be for a period of *less than a year*. The plaintiff instituted the present suit for recovery of arrears of rent. The defendant pleaded, *inter alia*, that the *rent-deed*

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