

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Hayward.

1911.
August 3.

KHUSHALCHAND PEMRAJ MARWADI (ORIGINAL DEFENDANT),
APPELLANT, *v.* NANDRAM SAHEBRAM MARWADI (ORIGINAL
PLAINTIFF), RESPONDENT.*

*Civil Procedure Code (Act XIV of 1882), sections 276, 295, 320, 325A—
Execution of decree—Attachment of property—Transfer of execution
proceedings to Collector—Property re-attached under another decree between
same parties—Second execution proceedings transferred to Collector—Claim
under the first decree satisfied by compromise—Collector asked to return
the *darkhast* as disposed—Judgment-debtor alienating the property—Claim
for rateable distribution under another decree—Claims enforceable under
the attachment—Bills of Sale Act, 1878, section 8—Practice and procedure.*

In execution of a money decree which the plaintiff obtained against B, certain property was attached and ordered to be sold. The execution proceedings were thereafter transferred to the Collector under section 320 of the Civil Procedure Code of 1882. In the meanwhile, the plaintiff obtained another money decree against B, in execution of which the property was again attached. These execution proceedings were also transferred to the Collector. While the Collector was taking steps for the execution of the first decree, the plaintiff informed the Mamlatdar, who was carrying on the execution work on behalf of the Collector, that his claim under the first decree was satisfied by B, and that the *darkhast* should be returned to the Court as disposed of. The Collector did so. Ten days after this, B sold the property to the defendant, who out of the consideration monies satisfied the plaintiff's first decree and other debts of B. The plaintiff obtained a third money decree against B, in execution of which the property was sold through the Civil Court and purchased by the plaintiff himself at the Court sale. He then sued to recover possession of the property from the defendant. In support of the plaintiff's claim, it was contended: (1) that the deed of sale relied on by the defendant was invalid, leaving regard to the provisions of section 325A of the Civil Procedure Code (Act XIV of 1882); (2) that the Collector was not warranted in acting upon the plaintiff's admission that the decree had been satisfied, because the satisfaction was one made out of Court, and not having been certified to the Court, it could not be recognised as a payment of the decree under section 258 of the Code; and (3) that the sale to the defendant was illegal and void under section 276, because the property was on the date of the sale under attachment in the plaintiff's *darkhast* ultimately disposed of by the Collector, on the strength of the plaintiff's application that it should be returned to the Court as 'disposed of' in consequence of the decree.

* First Appeal No. 501 of 1901.

Held, (1) that the sale to defendant was not void under the provisions of section 325A, inasmuch as sections 322 to 325 presupposed a decree which had to be satisfied and which was therefore capable of execution. That could not be said of a decree which its holder by his declaration to the Collector acknowledged to have been satisfied.

(2) That the intimation to the Collector, who was in charge of the execution, amounted to a *dup* certifying of the adjustment of the decree, which satisfied the conditions of section 258.

Muhammad Said Khan v. Payag Sahu(1), followed.

(3) That section 276 did not apply; for though the attachment had existed at the date of the sale to the defendant and was never formally raised, the *darkhast* claim having been satisfied was no longer enforceable under it.

Held, further, that the second attachment itself was illegal under the provisions of the last portion of the first paragraph of section 325A; and it could not affect the private sale to the defendant by B.

Held, also, that the sale to the defendant was not illegal and void under section 276 of the Code by reason of the second *darkhast*.

The moment the attachment of the plaintiff came to an end by reason of the satisfaction of his first decree sent to the Collector for execution, all claims enforceable under the attachment ceased to be enforceable under it.

A claim under another decree cognizable under section 295 ceased to be operative for the purposes of sections 276 and 295, the same being dependent upon the continuance of the said attachment.

Sorabji E. Warden v. Govind Ramji(2), distinguished.

Unesh Chander Roy v. Raj Bullubh Sen(3); *Gobind Singh v. Zalim Singh*; and *Kunhi Moossa v. Makhi*(5), followed.

When a decree-holder intimates to the Collector that his decree has been satisfied and that the necessity for its execution by the Collector has ceased to exist, the Collector's powers under sections 322 to 325 also cease, because the very foundation of them, consisting in the fact of a decree which is alive and capable of execution, has disappeared.

The provisions of section 276 of the Civil Procedure Code (Act XIV of 1882) make the private alienation void, not absolutely but only "as against all claims enforceable under the attachment" referred to in it. Where the execution proceedings, in the course and for the purpose of which the attachment was made, have come to an end on account of satisfaction of the decree by judgment-debtor, and in consequence the decree is no longer alive, the

(1) (1894) 16 All. 228.

(3) (1882) 8 Cal. 279.

(2) (1891) 16 Bom. 91.

(4) (1863) 6 All. 33

(5) (1899) 23 Mad. 478.

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attachment also ceases and there is no longer any claim "enforceable" under the attachment to make the private alienation effected by the judgment-debtor under the attachment void. The person for whose protection section 276 was primarily intended has had his claim in that event satisfied otherwise than by the attachment. As to any claim under another decree, cognizable under section 295, that had been dependent on the continuance of the said attachment, when that attachment was swept away, all other claims cognizable under it ceased to be operative for the purposes of sections 276 and 295. The only bar in the way of the private alienation was removed as if it never existed in law; and the question as to the private alienation made by the judgment-debtor to the defendant during the attachment became reduced to one between that judgment-debtor and his alienee.

SECOND appeal from the decision of B C. Kennedy, District Judge of Nasik, reversing the decree passed by V. D. Joglekar, Subordinate Judge at Pimpalgaon.

Suit to recover possession of property.

One Babu Sakharam was the owner of the property in dispute. In 1900, Nandram Sahebram (the plaintiff) brought a suit (No. 614 of 1903) against Babu and obtained a money decree. In execution of this decree, the Court attached the property and ordered it to be sold. The execution proceedings were then transferred to the Collector under section 320 of the Civil Procedure Code (Act XIV of 1882).

In 1901, the plaintiff obtained another money decree against the same judgment-debtor. The property was again attached in execution of this decree and the execution proceedings were also transferred to the Collector.

The Collector was in management of the property through the Mamlatdar, who was informed by the plaintiff, on the 21st May 1904, that his claim under the first decree was satisfied. On the same day the Mamlatdar made the following endorsement on the *darkhast*: "As the *darkhast* has been disposed of, the papers are sent that they may go to the Court." The Collector returned, on the 8th June 1904, the papers to the Court, where they were received on the 18th idem.

In the meantime, that is, on the 31st May 1904, the judgment-debtor sold the property to Khushalchand (the defendant) in consideration of the moneys which the latter had advanced to

pay off the plaintiff's first decree and the other debts of the judgment-debtor.

The plaintiff obtained a third money decree against the judgment-debtor. He applied on the 16th June 1904 to execute the decree. The Court attached the property again; and sold the same to the plaintiff in March 1905. The *darbhast* was disposed of.

The *darbhast* to execute the plaintiff's second decree was pending. It was disposed of in January 1906 on the plaintiff's informing the Court that the judgment-debtor's interest in the property was sold already under his third decree.

In 1907, the plaintiff applied for the second time to execute his decree in the second suit. The property was again attached; but the attachment was removed on the 22nd June 1907 at the instance of the defendant. On the same day, the plaintiff filed the present suit for a declaration that the property was liable to be attached and sold in execution of his second decree and that the sale to the defendant was void.

The Subordinate Judge held that the sale-deed to the defendant was passed for consideration; that it was not intended to defraud the creditors of the judgment; and that it was valid as against the plaintiff. He, therefore, dismissed the plaintiff's suit.

This decree was on appeal reversed by the District Judge, who held that on the day of the defendant's sale-deed there was a valid attachment under which the plaintiff could recover. The claim was therefore denied.

The defendant appealed to the High Court.

Nadkarni, with *P. P. Khare* and *D. C. Virkar*, for the appellant (defendant).—The plaintiff cannot rely on either of his two attachments as invalidating the sale to defendant. The first attachment had ceased to exist on 21st May 1904; and there was thenceforward "no claim enforceable under the attachment" within the meaning of section 276 of the Civil Procedure Code (Act XIV of 1882) Refer to *Umesh Chunder Roy v. Raj Bullabh Sen*⁽¹⁾; *Anund Loll Doss v. Jullodkur Shaw*⁽²⁾; *Abdul Rashid v.*

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(1) (1882) 8 Cal. 279.

(2) (1872) 14 Moo. I. A. 541.

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Guppo Lal⁽¹⁾; *Gobind Singh v. Zalim Singh*⁽²⁾; and *Kunhi Moossa v. Makhi*⁽³⁾. The judgment-debtor having paid off the plaintiff's first decree out of the moneys he borrowed from the defendant, the judgment-debt was wiped out. The decree having thus been no longer in existence, the Collector's power to act under sections 322 to 325 had come to an end.

Nor can the attachment under his second decree help the plaintiff. The Court had no power to buy it as long as the first attachment was in force (*vide* section 325A, clause 1). This attachment was void, and the subsequent order of transfer of the proceedings to the Collector was void also. The only course open to the judgment-debtor was to follow the procedure laid down by sections 322 and 323. Referred to *Murari Das v. The Collector of Ghazipur*⁽⁴⁾.

Coyaji, with *N. M. Samarth*, for the respondent.—It was not till the 8th June 1904 that the Collector re-transmitted the execution proceedings to the Civil Court. The necessity for the attachment had no doubt ceased on the 21st May 1904, when the plaintiff reported to the Mamlatdar that his claim was satisfied. But the attachment continued as a matter of fact to exist till the 8th June 1904, that is, till the time the proceedings remained on the file of the Collector. Further, the adjustment of the first decree was not certified to the Civil Court as provided for by section 258. Under section 325A, the sale to the defendant was void, for until the first action of re-transmitting the proceedings to the Civil Court was taken, the Collector did not become *functus officio*. He could exercise any of the powers conferred on him by sections 322 to 324 of the Civil Procedure Code (Act XIV of 1882).

The debt due under the second decree has remained unsatisfied. The plaintiff took active steps to satisfy it. The attachment placed by the Civil Court in execution of the decree may not be permissible, but the transfer of the execution proceedings to the Collector was notice to him of the existence of the second debt. If the Collector took no action, the plaintiff should not

(1) (1898) 20 All. 421.

(2) (1883) 6 All. 83.

(3) (1899) 23 Mad. 478.

(4) (1896) 18 All. 313.

suffer thereby. He relied on sections 276 and 295 of the Civil Procedure Code, 1882. Referred to *Sorabji E. Warden v. Govind Ramji*⁽¹⁾.

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Nalkarni, in reply, referred to *Muhammad Saïd Khan v. Payag Sahu*⁽²⁾ and *Lalla Trikam v. Bhavla Mithia*⁽³⁾.

CHANDAVARKAR, J.:—The question of law arising on this second appeal depends on a few facts, which are not in dispute and may be shortly stated, so far as they are material.

The plaintiff, who is respondent, having in Darkhast No. 1280 of 1900 in Suit No. 614 of 1900, attached the property in dispute in execution of his money decree against his judgment-debtor, Bapu Sakharam, the Court ordered the property to be sold, and under section 320 of the Code of Civil Procedure (Act XIV of 1882), then in force, transferred the execution to the Collector.

While the Collector was in management accordingly, the plaintiff, on the 21st of May 1904, informed the Mamlatdar, who was carrying on the execution work on behalf of the Collector, that, as his judgment-debtor had satisfied the decree, the necessity for sale had disappeared, and that the *darkhast* "should be disposed of". The Mamlatdar submitted the record and proceedings of the *darkhast* to the Collector on the same day with the following endorsement: "As the *darkhast* has been disposed of, the papers are sent that they may go to the Court." On the 8th of June, the Collector forwarded the papers accordingly to the Court, and the latter received them on the 16th of June.

In the meantime, that is, on the 31st of May 1904, the plaintiff's judgment-debtor, Bapu Sakharam, executed a deed of sale of the property to the defendant, in consideration of the moneys which the defendant had advanced for the satisfaction of the plaintiff's decree in the *darkhast* above mentioned, and also for payment of other debts of the said judgment-debtor.

(1) (1891) 16 Bom. 91.

(2) (1894) 16 All 228.

(3) (1887) 11 Bom. 478.

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The question is, whether this deed is valid, having regard to the provisions of section 325A of the Code of Civil Procedure (Act XIV of 1882).

The first limb of the first paragraph of that section provided as follows:—

“So long as the Collector can exercise or perform in respect of the judgment-debtor's immovable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease, or alienate such property or part except with the written permission of the Collector.”

It is contended for the plaintiff (respondent) that, as the Collector was in management of the property in dispute on the date of the sale to the defendant, and could then have exercised the powers under sections 322 to 325, the plaintiff's judgment-debtor was incompetent to sell and that the sale to the defendant is in consequence illegal and void. The answer to that is that sections 322 to 325 presuppose a decree which has to be satisfied and which is, therefore, capable of execution. That cannot be said of a decree, which its holder by his declaration to the Collector acknowledges to have been satisfied. The acknowledgment here was made no doubt to the Mamlatdar; but he was the Collector's agent, and notice to him was notice to the Collector. As a matter of fact, the Mamlatdar accepted the admission and acted upon it by disposing of the *darkhast* in the manner requested by the plaintiff, and the Collector upheld the Mamlatdar's action. True, it was upheld by the Collector after the date of the sale to the defendant, but in law that action of the Collector related back to the date on which the Mamlatdar, as the Collector's agent, had passed his order disposing of the *darkhast*.

When a decree-holder intimates to the Collector that his decree has been satisfied, and that the necessity for its execution by the Collector has ceased to exist, the Collector's powers under sections 322 to 325 also cease, because the very foundation of them, consisting in the fact of a decree which is alive and capable of execution, has disappeared.

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But it was said that the Collector was not warranted in acting upon the plaintiff's admission that the decree had been satisfied, because, the satisfaction was one made out of Court, and, not having been certified to the Court, it could not be recognised as a payment of the decree under section 258 of the Code. But the intimation to the Collector, who was in charge of the execution, amounted to a due certifying, which satisfied the conditions of section 258: *Muhammad Said Khan v. Pagag Sahu*⁽¹⁾. Our conclusions are confirmed by reference to Rule 15 of the rules under section 320 of the Code printed at page 52 of the High Court Civil Circulars, which provides that when execution has been as far as possible completed, the Collector shall re-transmit the papers together with the execution proceedings to the Court.

Then it was urged against the sale by the judgment-debtor, Bapu Sakharan, to the defendant, that it was illegal and void under section 276 of the Code of 1882, because the property was on the date of the sale under attachment in the plaintiff's *darkhast* ultimately disposed of by the Collector on the strength of the plaintiff's application that it should be returned to the Court as "disposed of" in consequence of the satisfaction of the decree. But though the attachment had existed then, and does not appear to have ever been formally raised, the *darkhast* claim, having been satisfied, was no longer enforceable under it.

Consequently the sale to the defendant remained unaffected, so far as it concerned that *darkhast* claim.

The question, then, is whether a separate *darkhast* (No. 2439 of 1902), presented on the 13th of December 1902 by the plaintiff for the execution of another money decree against the same judgment-debtor obtained in Suit No. 634 of 1901, rendered the sale illegal and void under section 325A. This separate *darkhast* was also transferred by the Court to the Collector for execution, after an order for attachment of the property, because the latter had already been seized of the property under section 320. The attachment in execution of this decree, existing in fact on the date of the private sale to the defendant by the judgment-

(1) (1894) 16 All, 228.

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debtor, is relied upon by the learned pleader for the plaintiff (respondent before us) as rendering the sale in question illegal and void. The learned District Judge has taken the same view, and in support of it he refers to the second paragraph of section 325A. But he has overlooked the second limb of the first paragraph of the section, which provides: "Nor shall any Civil Court issue any process against such property or part in execution of a decree for money." This second attachment was on that account illegal and could not affect the private sale to the defendant by the plaintiff's judgment-debtor. Further, the Collector does not appear to have taken any action under section 323 and, therefore, the case is untouched by the second paragraph of section 325A. This separate *darkhast* in fact never was and never could have been referred to the Collector under section 320 by reason of the existing reference of the previous *darkhast* and hence was wholly unaffected by the provisions of section 325A of the Code.

The question remains whether the sale by the judgment-debtor, Bapu Sakharam, to the defendant was illegal and void under section 276 of the Code (Act XIV of 1882) by reason of this separate *darkhast*. It might be argued that it was, because, though the claim under this separate *darkhast* could not legally be enforced by transfer to the Collector, it was still a claim enforceable under section 276 read with section 295 of the Code, as held in the case of *Soralji E. Warden v. Govind Ramji*⁽¹⁾, and confirmed by the explanation added to section 64 of the new Code (Act V of 1908).

But this argument is not supported by the language of section 276 and the authorities with reference to its proper construction and effect. The provisions of that section make the private alienation void, not absolutely, but only "as against all claims enforceable under the attachment" referred to in it. Where the execution proceedings, in the course and for the purpose of which the attachment was made, have come to an end on account of satisfaction of the decree by the judgment-debtor, and in consequence the decree is no longer alive, the

(1) (1891) 16 Bom. 91.

attachment also ceases, and there is no longer any claim "enforceable" under the attachment to make the private alienation effected by the judgment-debtor during the attachment void. The person for whose protection section 276 was primarily intended has had his claim in that event satisfied otherwise than by the attachment. As to any claim under another decree, cognizable under section 295, that had been dependent on the continuance of the said attachment. When that attachment was swept away, all other claims cognizable under it ceased to be operative for the purposes of sections 276 and 295. The moment the decree sent to the Collector was satisfied, everything dependent on it (in virtue of sections 322 to 325A) ceased to have legal effect and there was no claim left which was enforceable under the attachment. All obstruction to the legal validity of the private alienation made during the continuance of the attachment having been removed, the alienation revived and became legal, because the question then came to be one entirely between the alienor and the alienee. See *Umesh Chunder Roy v. Raj Bullabh Sen*⁽¹⁾, *Gobind Singh v. Zalim Singh*⁽²⁾ and *Kunhi Moossa v. Makki*⁽³⁾. The principle of law applicable here is the same that was applied by the Court of Chancery in England in construing section 8 of the Bills of Sale Act of 1878 in *Ex parte Blaiberg: In re Toomer*⁽⁴⁾. Section 8 of that Act provided that a bill of sale of the kind specified there "shall be deemed fraudulent and void" as against an execution-creditor under certain specified circumstances. It was held by the Court that it was void, not to all intents and purposes, but merely to the extent of satisfying the claims of the persons indicated in the section; that the section was intended only for the benefit of the execution-creditor, so that if the execution was swept away, as if it had never existed, the bill-of-sale-holder became entitled to the goods. So here, the moment the attachment of the plaintiff came to an end by reason of the satisfaction of his first decree sent to the Collector for execution, all claims enforceable under the attachment ceased to be enforceable under it. The only bar in the way of the private alienation was removed as if it never

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(1) (1882) 8 Cal. 279.

(3) (1899) 23 Mad. 478.

(2) (1883) 6 All. 33.

(4) (1883) 23 Ch. D. 254.

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existed in law; and the question as to the private alienation made by the judgment-debtor to the defendant during the attachment became reduced to one between that judgment-debtor and his alienee. It was never competent for the former to contend that his sale was ever void as against him.

For these reasons the decree appealed from must be reversed and that of the Subordinate Judge restored with the costs in this Court and in the lower Court of appeal on the respondent (plaintiff).

Decree reversed.

R. R.
