APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

August 2.

MANILAL GIRDHAR ALIAS CHAITANDAS PATEL (ORIGINAL DEFENDANT), APPELLANT *v.* NATHALAL MAHASUKHRAM VYAS (ORIGINAL PLAINTIFF), RESPONDENT*.

Civil Procedure Code (Act V of 1908), Order XXI, Rule 58—Execution—Attachment—Purchaser from judgment-debtor applying for removal of attachment—Order in attachment proceedings declaring the sale-deed ineffective—Suit to set aside the order—Attachment withdrawn pending suit—Suit by vendee against vendor to recover possession—Order in attachment proceedings not to operate to the prejudice of the vendee—Indian Limitation Act (IX of 1908), Sch. I, Article 11.

The defendant executed a sale-deed in favour of the plaintiff. After the date of the sale, the property was attached by a creditor of the defendant. The plaintiff applied for removal of the attachment under Order XXI, Rule 58, Civil Procedure Code, 1908. In the attachment proceedings the Court by its order, dated the 14th December 1915, held that the sale-deed was inoperative as it was effected to defraud creditors. The plaintiff filed a suit to set aside the order but it was withdrawn because the defendant settled with the judgment creditor and attachment was raised. The plaintiff, thereupon, filed a suit to recover possession. The defendant contended that the suit not having been brought within a year of the order passed in attachment proceedings was barred by limitation.

Held, that the suit was not barred ; as soon as the attachment was withdrawn, there was no longer any attachment or any proceedings in execution in which the order against the plaintiff would operate to his prejudice.

Gopal Purshotam v. *Bai Divali*(1), relied on.

Krishna Prosad Roy v. *Bipin Behary Roy*(2), referred to.

SECOND appeal against the decision of R. S. Broomfiled, District Judge, Ahmedabad, reversing the decree passed by G. D. Yajnik, Joint Subordinate Judge at Ahmedabad.

Suit to recover possession.

* Second Appeal No. 678 of 1919.

(1) (1893) 18 Bom. 241. (2) (1903) 31 Cal. 228.

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On the 10th May 1915, a sale-deed of the property in suit was executed by the defendant in favour of the plaintiff. On the 18th May, the property was taken on lease by the defendant under a registered rent-note.

In execution of a decree against the defendant the property was attached. The plaintiff took proceedings to remove the attachment under Order XXI. Civil Procedure Code, 1908. In those proceedings the Court came to the conclusion that the sale-deed was inoperative as it was effected to defraud the creditors. The order of the Court was dated 4th December 1913. The plaintiff then filed Suit No. 86 of 1916 to set aside the order. The suit was withdrawn on 15th August 1916, because defendant settled with the judgment-creditor and the attachment was withdrawn.

The plaintiff, thereupon, filed the present suit on the 25th May 1917 to recover possession of the plaint house and Rs. 125 as rent on account of the registered lease, dated the 18th May 1915.

The defendant contended that the sale-deed was effected through fraud in order to defraud the creditors, that the lease was inoperative and that the sale was declared to be ineffective in attachment proceedings.

The Subordinate Judge dismissed the suit relying on the decision in the attachment proceedings against the plaintiff.

On appeal, the District Judge held that the order in the attachment proceedings was not conclusive against the defendant as he was not a party to those proceedings. He remanded the case for the trial on the issue whether the transfer by sale on the 10th April conveyed any interest to the plaintiff and whether the

effect of the lease of 18th May 1915 created the relation of landlord and tenant between the parties.

The trial Court having found on the issue in the affirmative, the District Judge reversed the decree and allowed the plaintiff's claim. On the question of consideration he found that only the sum of Rs. 1,500 out of Rs. 2,500, the consideration mentioned in the sale-deed, was proved.

The defendant appealed to the High Court.

G. N. Thakor, for the appellant.

H. V. Divatia, for the respondent.

MACLEOD, C. J.:—The plaintiff sued to recover possession of the plaint house and Rs. 125 rent due under a registered lease, dated the 18th of May 1915. The defendant filed a written statement contending that the sale-deed was effected through fraud in order to defraud the creditors, that the lease was inoperative and that the sale was declared to be ineffective in a miscellaneous application filed by the plaintiff.

It appears that after the sale-deed had been executed by the defendant in favour of the plaintiff, the property was attached by a creditor of the defendant. The plaintiff took proceedings under Order XXI for removing the attachment. But in summary proceedings the Court came to the conclusion that the sale-deed was inoperative as it was effected to defraud the creditors. Plaintiff then filed Suit No. 86 of 1916 to set aside this order. That suit was withdrawn on the 15th of August 1916, because defendant settled with the judgment-creditor and the attachment was withdrawn. This suit was filed on the 25th of May 1917.

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The trial Court dismissed the suit relying on the decision in the attachment proceedings against the plaintiff. In first appeal the learned District Judge remanded the case for the trial of the issue whether the transfer by sale on the 10th of April conveyed any interest to the plaintiff and whether the effect of the lease of 18th May 1915 created the relation of landlord and tenant between the parties. He disagreed with the finding of the lower Court that the order in miscellaneous proceedings 68 of 1915 was conclusive as against the plaintiff in favour of the present defendant, who was not a party to those proceedings. The lower Court found on those issues in the affirmative. Thereupon the District Judge reversed the decree of the lower Court and decreed the plaintiff's suit.

It has been argued in this Court that the plaintiff not having sued within a year of the order passed in the attachment proceedings could not now file this suit against the present defendant. But it appears to me that the decision in *Gopal Purshotam* v. *Bai Divali*[1] decides the question. It is true in that case the defendant, who had made an unsuccessful attempt to remove the attachment on the property which she claimed as her own, was in possession. When the plaintiff, who had privately purchased the land which had been attached and consequently withdrew his application for execution, endeavoured to get possession, it was contended by him that because the defendant had not brought a suit within one year to set aside the order of the Subordinate Judge, he was barred from setting up a claim to the land. That contention was disallowed and Sargent C. J. said: "We agree with the lower appeal Court that, when the plaintiff withdrew his attachment, the parties were restored to the

[1] (1893) 18 Bom. 241.

status quo ante. The object of the claim which was preferred by the defendant was, as contemplated by section 278, Civil Procedure Code, to obtain the removal of the attachment, and when that attachment was removed by the judgment-creditor's own act on 20th November, 1888, there was no longer an attachment or any other proceedings in execution on which the order could operate to the prejudice of the claimant and therefore no necessity for bringing a suit to set aside the order." Applying the reasoning of that case to this case, as soon as the attachment was withdrawn, there was no longer any attachment or any proceedings in execution in which the order against the plaintiff would operate to his prejudice. The defendant, his vendor, was not a party to the claimant's proceedings, and once the attachment proceedings were withdrawn, the plaintiff purchaser and the defendant vendor were restored to the position which they occupied before the property was attached. No doubt if the attachment had continued when the property was sold in execution before the claimant filed the suit, then different considerations would apply and certainly the order would be conclusive against him in favour of the purchaser if the suit was not filed within a year of the date of the order. But if the defendant's argument were to succeed, this result follows that a party entitled to bring an action within a period fixed by the Indian Limitation Act for that particular action would be barred from bringing a suit within a very much lesser period merely because it happened by accident that attachment proceedings had been instituted at the instance of a third party. In my opinion, therefore, the learned District Judge was perfectly correct in disregarding the order in miscellaneous proceedings 68 of 1915.

Then it is contended that only Rs. 1,500 consideration has been proved out of Rs. 2,500. Therefore the

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defendant has a lien for the remaining Rs. 1,000. The lower Court came to the conclusion that Rs. 2,500 had been paid and clearly the defendant had admitted that at a time when it suited him to do so. But the learned District Judge seemed to think that the onus lay on the plaintiff to prove that he had received the whole of the consideration, and dealing with the evidence from that point of view considered that he could not hold it proved that the other thousand rupees had been paid. I think that the onus clearly lay on the defendant, after he had admitted that the whole consideration had been paid, to show that that was incorrect and that he still had a lien on the property for some of the purchase money. However that finding made no difference in the decree passed by the learned District Judge. Apparently no suggestion was made on the part of the defendant that there was a lien for a thousand rupees. I think the probable explanation of that was, that the question, how much of the consideration money was actually paid, was not properly dealt with in the case. No specific issue was raised. What the defendant contended was that the whole sale was inoperative and was a fraud against creditors. The Court very certainly was satisfied that Rs. 1,500 out of the Rs. 2,500 went to pay the claim of one of the defendant's creditors, and if once that was proved, it is perfectly clear that it could not be held that the sale was inoperative and it was not necessary to consider whether the plaintiff had received the balance of Rs. 1,000 or not.

In my opinion, therefore, the appeal fails and the decree of the learned District Judge must be confirmed with costs.

FAWCETT, J.:—I agree. On the first point I may also refer to the case of *Krishna Prosad Roy* v. *Bipin Behary Roy*[1]. It was there held, in a case like the

(1) (1903) 31 Cal. 228.

present where the attachment was withdrawn, that the plaintiff is not required to institute a suit under section 283 of the previous Code to establish his right to the property in dispute.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920. *August 4.*

GOVINDA BIN KRISHNA SATHE (ORIGINAL PLAINTIFF), APPELLANT *v.* HANMAYA LINGAYA FULMALI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Court Fees Act (VII of 1870), section 7 (iv) (a)*—Suits Valuation Act (VII of 1887), section 8—Suit for injunction—Valuation of claim.*

The plaintiff, in a suit for injunction, valued his claim for Court-fee purposes at Rs. 10 and for purposes of jurisdiction at Rs. 500. The lower appellate Court accepted the valuation for both purposes at Rs. 500 and asked the plaintiff to pay Court-fees on that amount. On appeal to the High Court,

Held, reversing the order, that, under section 7, clause 4 (*a*) of the Court Fees Act, 1870, the plaintiff was entitled to value his claim at Rs. 10 for Court-fee purposes, and that it was wholly unnecessary for him to fix any value for the purposes of jurisdiction as by section 8 of the Suits Valuation Act the value determinable for the computation of Court-fees and the value for the purposes of jurisdiction shall be the same.

SECOND appeal from the decision of J. D. Dikshit, District Judge of Sholapur, dismissing an appeal from a decree passed by T. N. Desai, Joint Subordinate Judge at Sholapur.

Suit for injunction.

The plaintiff sued to obtain an injunction against the defendants restraining them from obstructing the

* Second Appeal No. 972 of 1919.