

Before Mr. Justice Jackson and Mr. Justice Mitter.

ROY LUCHMIPUT SINGH BAHADOOR (DEFENDANT) v. THE
SECRETARY OF STATE FOR INDIA (PLAINTIFF).*

1873
May 1.

*Act VIII of 1859, ss. 92, 246—Injunction—Attachment in Execution of Decree—
Procedure.*

THIS was an appeal against an order of the Officiating Subordinate Judge, of Moorshedabad granting an injunction under s. 92 of the Code of Civil Procedure for the purpose of stopping the execution-proceedings in respect of certain immoveable property which had been attached with a view to sale in execution of a decree obtained by Roy Luchmiput Singh Bahadoor against the Nawab Nazim of Moorshedabad. Upon the attachment of the property in question, a claim to it had been put forward by the Secretary of State in Council as entitled in succession to the East India Company. That claim was refused, and as provided by s. 246, the Secretary of State immediately brought a suit against Roy Luchmiput Singh to establish his right, and it was in this suit that the order now complained of was made. The injunction was one restraining the defendant, Roy Luchmiput Singh, from proceeding to execute his decree against the property which was the subject of dispute. The Nawab Nazim of Moorshedabad was subsequently made a party to the suit under s. 73, Act VIII of 1859.

The defendant, Roy Luchmiput Singh, appealed to the High Court. The grounds of appeal were, that the order granting the injunction was illegal since neither attachment nor sale could affect the interest of the plaintiff if a decree were ultimately obtained by the Government, as the effect of such a decree would be to restore to the plaintiff the attached property in whomsoever's hands it might be; and that as no damages could accrue to the plaintiff within the meaning of s. 92, Act VIII of 1859, even if a sale of the attached property should take place, there were no legal grounds for granting the injunction.

Mr R. T. Allan and Baboos Sreenath Doss and Rash Behary Ghose for the appellant.

The Advocate-General (offg.) (Mr. Paul) and The Standing Counsel (Mr. Kennedy) for the respondent.

The judgment of the Court was delivered by

JACKSON, J. (who, after stating the facts as above, continued):—It appears to me that regard being had to the terms of s. 92, and to the place

* Miscellaneous Regular Appeal, No. 68 of 1873, from an order of the Officiating Subordinate Judge of Zillah Moorshedabad, dated the 24th February 1873.

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which that section occupies in the Code of Civil Procedure, its provisions are not applicable to a case like the present, and do not justify the issue of this injunction. The suit, although the Nawab Nazim has since been made a party under s. 73, was against Roy Luchmiput Singh, and the injunction was specifically directed against him. It cannot, I think, be said, that the property in dispute was in danger of being wasted, damaged or alienated by this defendant, nor as the property been, or is it at present, in any sense in his possession. That which the plaintiff apprehended, and which was in fact likely to occur, was that the defendant, should, in executing his own decree, set the Court in motion, and cause the right, title, and interest of the Nawab Nazim to be sold and conveyed to some other person. If such sale had taken place, and if the property had gone into the hands of some person who was likely to waste, damage or alienate it, such an injunction might have been properly and reasonably applied for. The course which has been taken in the present instance appears to me too nearly to resemble the action of the Courts of Equity upon proceedings at common law in England to be applicable to proceedings of our mofussil Courts, and I think therefore that the plaintiff entirely misconceived the course which he ought to have taken in applying for this injunction. This, however, it appears to me, is only a matter of procedure. The parties before us in the present case are the very parties who were before the Court in the execution claim and proceeding and as in my opinion upon the state of facts disclosed in this case, it would not have been proper for the Court to proceed to sell the property in dispute I do not think that that which is in itself right and reasonable should be prejudiced because the parties have taken a technically erroneous course. I cannot doubt that, if the Secretary of State had presented a further petition in Court, in the execution case of Roy Luchmiput Singh, representing that upon the rejection of his claim, he has now brought a suit to establish his right, and praying that the sale should be postponed, the property continuing under attachment, the Court would and ought to have complied with his application. It appears to me, therefore, that we should direct the present injunction to be dissolved, but at the same time we should order that the application should be dealt with as if it were made in the execution proceedings, and that an order should be entered on those proceedings staying the sale pending the suit which has now been commenced, provided always that it should be competent to the decree-holder in case of any undue delay in prosecuting the suit to make a further application to the Court for an immediate sale. The order of the Court below being varied in this way the case appears to me to be one in which we should make no order as to costs.