

1868

Dec. 1;

*Before Mr. Justice L. S. Jackson and Mr. Justice Mitter*

**RADHA GOBINDA SHAHA (PLAINTIFF) v. SHEIKH TAWKU  
JAMADAR (DEFENDANT.)\***

*Attachment—Proceeds of Sale of Property attached—Distribution among  
Decreeholders—Act VIII. of 1859, ss. 270, 271.*

A creditor holding several decrees against the same judgment-debtor, cannot take out simultaneous attachments against that debtor's property, so as to entitle him to have all his decrees paid in full to the exclusion of other attaching creditors. He can only be regarded as first attaching-creditor in respect of one of the decrees which he held.

THE plaintiff sued to set aside an order made by the Court executing a decree, whereby a distribution was made of the sale proceeds of the properties of one and the same judgment-debtor amongst the plaintiff and the four defendants. Plaintiff had four decrees against the same judgment-debtor. In execution he attached his debtor's property in the year 1865. A claim to the property attached having been advanced, the attachment was taken off, and he was forced to bring a suit to have the property so released declared liable to sale in satisfaction of his decrees. He succeeded in that suit, and afterwards in (1865) took out another attachment in respect of one of his four decrees. Subsequently he also attached the property in respect of his remaining decrees, as did also other judgment-creditors, namely the defendants in the suit. This suit was brought for a declaration that the plaintiff was entitled to satisfaction of all his decrees, before the other attaching-creditors received anything. Those creditors were not parties to the suit which the plaintiff had brought against the successful claimants. The Officiating Sudder Ameen dismissed the plaintiff's suit, on the ground that no suit was maintainable under section 270, Act VIII. of 1859, for the reversal of an order for distribution against the provisions of that section, relying on the decision in the case of *Harish Chandra Sircar v. Azimooddin Shahr* (1); *secondly*, that the attachment at first sued out had been

\* Special Appeal, No. 1536 of 1868, from a decree of the Principal Sudder Ameen of Dacca, affirming a decree of the Officiating Sudder Ameen of that district.

nullified by the admission of claims. Subsequently, the amount of the decree, for which attachment was at first made by him, had been paid in the first place; moreover, the cost of the regular suit had been separately awarded to the plaintiff.

This decision was confirmed by the Principal Sudder Ameen, and the plaintiff thereupon appealed to the High Court.

Baboo *Kali Mohan Das* and *Anand Chandra Ghosal* for appellants.

Baboo *Ramesh Chandra Mitter* for respondent.

JACKSON, J. (After stating the facts).—In special appeal it is contended that the plaintiff was so entitled in respect of all the decrees, on one of which, it is alleged, that the attachment did take place; and inasmuch as the fact of attachment in the four suits does not plainly appear, we are asked to remand the case to the lower Court, in order that an issue may be framed and tried on this point. It appears to me that this was a point which the plaintiff in his view of the case, was bound to take in regular appeal; for if, as he considers, he was entitled to the relief he asked for, on the ground that he had actually attached in all his four suits in the year 1864, and if he had been prejudiced by the omission of the Court of first instance to frame an issue, and so enable him to tender evidence on that point, it was his business distinctly to complain of that omission in the regular appeal, and if he failed to do so, the lower Appellate Court could not be expected to give relief upon a point not raised before it. But it seems to me that the question is not material, for it must be conceded that if the plaintiff did not actually attach in all four suits, he must have attached first in one of them, and the other three would have been subsequent attachments, no matter at how short an interval of time, and, as subsequent attachments, they would take rank with all other subsequent attachments.

It cannot, I think, be said that a creditor, holding several decrees against the same judgment-debtor, can take out simultaneous attachments against that debtor's property in such a manner as to entitle himself, under section 270 of the Code of

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Criminal Procedure, to have all his decrees paid in full to the exclusion of other attaching creditors. I understand the words of section 270, viz. "the person on whose application such property was attached" to mean not the individual but the executing-creditor, looking upon him simply as the person interested in that particular suit.

Then it cannot be said that there is any efficacy in the decrees which the plaintiff obtained declaring him entitled to be paid in all the four suits out of the property attached and released, because the defendants before us were no parties to that decree.

It was contended that the four attachments, made in the year 1864 (if there were four attachments,) were revived by the efficacy of the decrees which the plaintiff obtained against the claimants; but plaintiff's own conduct in afterwards taking out a separate attachment in the first of those cases appears to militate against this view. Whether or not, however, I think as I have already said, that the plaintiff can only be regarded as first attaching creditor, in respect of one of his decrees which he held; consequently, on this ground the Court below ought to have dismissed his suit.

The special appeal, therefore, in my opinion, must be dismissed with costs.

MITTEE, J.—I concur with my learned colleague in dismissing this appeal.

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*Before Mr. Justice Phear and Mr. Justice Hobhouse.*

UMATARA DEBI (PLAINTIFF) v. KRISHNAKAMINI DASI AND  
OTHERS (DEFENDANTS)\*

*Res judicata—Cause of Action—Act VIII. of 1859, s. 2.*

A sued B to recover possession of certain land, claiming it as part of her talook. In a former suit, A had sued B to recover possession of the same land, claiming it as towfir (or excess), and her suit had been dismissed. *Held*, that A's present suit was barred under section 2 of Act VIII. of 1859 (1).

See also 1  
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This was a suit instituted in the Court of the Principal Sudder Ameen of the 24-Pergunnas to obtain possession of

\* Regular Appeal, No. 19 of 1868, from a decision of the Principal Sudder Ameen of the 24-Pergunnas.

(1) See *Krinayam v. Bhagwan Das*, 1 B. L. R. (A. C.), 63.