

The 16th January 1871

Present:

The Hon'ble J. P. Norman, *Officiating Chief Justice*, and the Hon'ble H. V. Bayley and Dwarkanath Mitter, *Judges*.

Attachment of decree—Sections 205 and 237, Civil Procedure Code.

Case No. 93 of 1870.

Regular Appeal from a decision passed by the First Subordinate Judge of the 24-Pergunnahs, dated the 31st January 1870.

Prince Golam Mahomed (Defendant),
Appellant,

versus

Indro Chand Johuree (Plaintiff), *Respondent.*

Baboos Romesh Chunder Mitter and Hem Chunder Banerjee for Appellant.

Baboos Bhyrub Chunder Banerjee and Umbika Churn Bose for Respondent.

A decree is property within the description of "other property" in Section 205, Act VIII. of 1859, and is, therefore, liable to attachment and sale in execution. For the purpose of attaching the decree itself and the money due thereunder after it has come into Court, the form laid down in Section 237 is the most appropriate.

Norman, C. J.—I AM of opinion that the decree of the Subordinate Judge is quite correct. Prince Mahomed Rohimooddeen purchased a moiety of a decree in a suit pending in the Court of the Judge of the 24-Pergunnahs by Shumsoonissur Begum against Moonshee Buzloor Roheem. Prince Mahomed Rohimooddeen's name was not entered in the record as a co-plaintiff, or as being jointly interested in the decree with Shumsoonissur; but by two several orders in the suit, he was treated as being jointly interested with her in the decree and standing in the position of a decree-holder. By the latest of these, dated the 26th of May 1868, it was ordered that he should be at liberty to bid as such, and that a certificate of receipt signed by him should be taken in part-payment of his (8 annas) share of the decree.

On the 17th of August, Indro Chand Johuree, the plaintiff in the present suit, having applied for an attachment of the rights and interests of Prince Mahomed Rohimooddeen in the decree, an order was passed by the Subordinate Judge, who sent a roobakaree to the Judge of the 24-Pergunnahs,

directing that the right, title, and interest of Rohimooddeen in the decree should be attached.

The Judge, on receipt of the roobakaree, passed an order that the decree should be attached according to practice.

On the 24th of August, Prince Golam Mahomed purchased from Prince Mahomed Rohimooddeen his interests under the decree. After this date, the sum of Rupees 1,64,339-1-9 was paid into Court by the defendant Moonshee Buzloor Roheem, the judgment-debtor, on account of the share of Prince Mahomed Rohimooddeen. The whole of this amount, less certain sums to which he admitted the right of the Agra Bank, and Mr. Wilkinson, as Administrator-General, was subsequently taken out of Court by Prince Golam Mahomed.

The present suit is brought by Indro Chand Johuree against Prince Golam Mahomed to recover the amount to which the plaintiff would have been entitled under his attachment out of the sum paid into Court to the credit of Prince Rohimooddeen; and the point argued before us is that the attachment of the decree of the 17th of August operated nothing, inasmuch as it was not an attachment in accordance with any one of the Sections from 233 to 238 of the Civil Procedure Code.

Now, we may observe that the 205th Section declares what are the several species of property liable to attachment and sale under decree, namely—"lands, houses, goods, money, bank-notes, Government securities, bonds, or other securities for money, debts, shares in the capital or joint stock of any railway, banking, or other public company or corporation, and all other property whatsoever, moveable or immoveable, belonging to the defendant, and whether the same be held in his own name, or by another person in trust for him or on his behalf."

Now, we have no doubt but that a decree is property which falls within the description of "other property" in Section 205, and is, therefore, declared to be liable to attachment and sale in execution of a decree. But when the Sections from 233 to 238 are read through carefully, it will be found that not one of these Sections appears to be exactly applicable to such property as a decree.

We think, however, that, assuming that none of these Sections contain any provision appropriate for the attachment of a decree, it must not be taken that a decree which

falls within the class of subjects declared liable to attachment by Section 205 is therefore not so liable. Of the several species of property for the attachment of which provision is made by the several Sections above mentioned, that which is most nearly analogous to the right of a decree-holder in a decree which is being executed in a Court of justice is a security in deposit in a Court of justice or money in a Court of justice or in the hands of any officer of Government which is or may become payable to the defendant. The attachment of such property is provided for by Section 237.

The attachment in the present case has been made in the manner prescribed by Section 237; and we think that, for the purpose of attaching the decree itself, and the money when it came into Court, the form of attachment under Section 237 is perhaps the most appropriate. A decree for money may be considered as consisting of two things: first, the debt due from the judgment-debtor to the decree-holder; and, secondly, the security for that debt by a decree which renders it capable of being enforced. The one being capable of separation from the other, the two things are distinct—one being a debt, the other being the security for that debt.

Now, if a decree were to be treated merely as a debt, and if the only mode of attaching it is by an order for attachment under Section 236, namely, by a "written order prohibiting the creditor from receiving the debts, and the debtor from making payment thereof," the security of a creditor attaching a decree will be very imperfect, because the attachment would not stay execution of the decree; and if the execution proceeds and the money is realized and paid into Court under the decree, if the decree-holder disregards the order of the Court and applies to take out the money in contempt of the order of attachment served on him, he can do so, unless there is some order recorded in the Court executing the decree prohibiting the decree-holder from receiving the money out of Court. There must, therefore, be some means of attaching the decree itself more effectual than the ordinary attachment under Section 236. No doubt, it would be prudent and proper in case of attachment of a decree to serve the judgment-debtor with an order under Section 236 in order to attach the debt due from him. But the want of such order will not affect the attachment of the decree.

In my opinion, the attachment in the present case was valid and effectual. Prince Golam Mahomed has taken out of Court money which was subject to the lien and attachment of the plaintiff Indro Chand Johuree. I think he is, therefore, liable to refund to Indro Chand the money so taken, to the extent of his lien, and the Subordinate Judge was right in decreeing the plaintiff's case.

This appeal must, therefore, be dismissed with costs.

Bayley, J.—I concur.

Mitter, J.—I am of the same opinion.

I think that the objection now taken before us was never pressed by the defendant in the Court below, and as it is not pretended by him that he took the assignment from Prince Rohimooddeen without being aware of the attachment, I think he ought not to be permitted to take that objection now.

I would also dismiss the appeal with costs.

The 16th January 1871.

Present:

The Hon'ble L. S. Jackson and W. Ainslie,
Judges.

Lessee—Boundary-dispute—Survey.

Case No. 127 of 1870.

Regular Appeal from a decision passed by the Officiating Judge of Gya, dated the 21st March 1870.

Ameeree Begum and others (Some of the Defendants), *Appellants,*

versus

Gobind Pandey and another (Plaintiffs),
Respondents.

Mr. R. T. Allan for Appellants.

Messrs. R. E. Twidale and C. Gregory and Baboos Unnoda Pershad Banerjee and Mohesh Chunder Chowdhry for Respondents.

In a suit by the lessee of a mouzah to recover possession of a piece of land from a lessee of an adjoining mouzah, both making title under one zemindar, where a survey had taken place at a time when both mouzahs to which respectively the land was claimed as belonging were in his possession, and when neither of the leases was in existence:

Held that the suit involved simply a question of boundary, and what was to be ascertained was, to which mouzah the land in dispute was found to belong at the time of the survey.