

is wholly barred. There is, it is true, a proviso in the bond here that the obligee might waive the right to sue for the whole, and, instead, accept payment by instalments, but that proviso gave him nothing more than the right of waiver which the law gave him, which right, as has been above observed, there is nothing here to show that he exercised.

1874.  
Navalmal  
Chambhirmal  
v.  
Dhodiba bin  
Bhagvantrav.

[ APPELLATE CIVIL JURISDICTION. ]

August 24.

*Special Appeal No. 133 of 1874.*

BÁLÁJI RÁMCHANDRA ... .. *Defendant and appellant.*

GAJANAN BABÁJI ... .. *Plaintiff and Respondent.*

*Rights of prior and puisne attaching creditors—Alienation—Attachment—  
Act VIII. of 1859, Sections 240, 270, 271.*

A private alienation of property, while under attachment, is null and void only as regards the attaching creditor and those who claim under or through the attachment. *Anund Lal Doss v. Jullodhur Shaw* (17 Cal. W. R. Civ. Rul. 313) followed (α).

The fact that a puisne attaching creditor mentioned, in his application for attachment and sale of certain property of his judgment-debtor, that the same property had already been attached at the instance of another execution-creditor, does not render the puisne creditor a claimant through the first attaching creditor.

A puisne attaching creditor cannot be regarded as claiming through a prior attaching creditor, though the assignee of an attaching creditor's rights, or the next of kin of a deceased attaching creditor, may be said to claim under or through him.

Act VIII. of 1859, Section 240, is for the benefit of an attaching creditor (subsequent to, and in defiance of, whose attachment, the private alienation, thereby declared void, has been made), and of those claiming under or through him, and not for the benefit of puisne attaching creditors, whose attachment is laid later than such private alienation.

Sections 270 and 271 of the Civil Procedure Code apply only to cases where there has been a sale under the first attachment.

**T**HIS was a special appeal from the decision of F. Hosking, Acting Assistant Judge at Satara, in Appeal No. 13 of 1873, reversing the decree of Amrit Shripat, Subordinate Judge of Karad.

(α) See 11. Calc. W. R. App., from O. J. 1.

1871.  
 Báláji  
 Rámchandra  
 v.  
 Gajánan  
 Báláji.

The facts of the case, so far as they are material to this report, are briefly these :—

A house with its site, the property of one Sitárám Dikshít, was attached by his judgment-creditor Sakhárám Dikshít. Subsequently, on the 12th September 1869, the plaintiff Gajánan purchased the house and site from the said Sitárám Dikshít and another, part of the purchase-money being used by Sitárám in paying his judgment-creditor, Sakhárám Dikshít, the amount of his decree. Sakhárám, consequently did not deposit money in Court for expenses of the sale. The attachment, therefore, was raised by the Court on the 30th November 1869. On the 16th September 1869, Vásudev Rámchandra, another judgment-creditor of Sitárám, applied for the attachment and sale of the aforesaid house and site. Vásudev stated in his application that the property had already been attached by Sakhárám Dikshít, and prayed that in the event of its sale under the prior attachment, the surplus proceeds might be applied to the satisfaction of his (Vásudev's) own decree. The property, accordingly, was again attached on the 4th July 1870, and purchased by the defendant Báláji Rámchandra at the Court's sale. Gajánan, therefore, brought the present suit to establish his right to the house, after having failed in his attempt to raise, under Section 246 of the Civil Procedure Code, the attachment placed by Vásudev. The defence chiefly was that the sale to the plaintiff was null and void, inasmuch as it was made while the property was under attachment. The Subordinate Judge threw out the plaintiff's claim on that ground. But the Assistant Judge in appeal, on the authority of a ruling of the Privy Council referred to in the judgment of the High Court, reversed the decree of the First Court, and, holding the plaintiff's purchase valid, awarded the house to him.

In special appeal it was contended (1) that the sale to the plaintiff, being admittedly made while the property was under attachment, was null and void, and (2) that the decision of the Appellate Court was opposed to the provisions of Sections 240, 270, and 271, of the Civil Procedure Code.

The special appeal was argued before WESTROPP, C. J., and KEMBALL, J., on the 24th August 1874.

*Janardan Sakharam Gadgil* for the appellant.

*Bhairavnath Mangesh* for the respondent.

1874.  
Balaji  
Ranchandra  
v.  
Gajanan  
Babaji.

WESTROPP, C.J:—The Court is of opinion that the Assistant Judge rightly applied the Privy Council decision in *Anund Lall Doss v. Jallothur Shaw (b)* to this case. The fact that the puisne attaching creditor (the appellant) mentioned in his *darkhast* of the 16th September 1869, whereby he sought an attachment of the property in dispute, that it was already under attachment by the prior execution-creditor. Sikharam Dikshit, does not render the puisne creditor a claimant through the first attaching creditor. Moreover, the first attachment was raised on the 30th November 1869 for non-payment, by the first attaching creditor, of the expenses of such sale as might take place under it, so that it was no longer in existence when the appellant's attachment was laid on the property upon the 4th July 1870.

An assignee of an attaching creditor's rights or the next of kin of a deceased attaching creditor may be said to claim under or through the attaching creditor, but we are unable to perceive that a puisne attaching creditor can be regarded as claiming through him. Sections 270 and 271 of the Civil Procedure Code apply only to cases in which there has been a sale under the first attachment. Section 240 is for the benefit of the attaching creditor (subsequent to, and in defiance of, whose attachment the private alienation, thereby declared void, has been made), and of those claiming under or through him, and not for the benefit of puisne attaching creditor's whose attachments are laid on later than such private alienation. The private alienation in the present case having been found to be a *bona fide* transaction, and having priority over the appellant's attachment, we affirm the decree of the Assistant Judge with costs.

*Decree affirmed with costs.*

(b) 17 Cal. W. B. Civ. Rul. 313.