

## LETTERS PATENT APPEAL.

*Before Sir Francis W. Maclean, K.C.I.E., Chief Justice, and  
Mr. Justice Holmwood.*

1907  
May 17.

GOPI CHAND BOTHRA

v.

KASIMUNNESSA KHATUN.\*

*Sale in execution of decree—Sale by inferior Court, of property attached by  
a superior Court—Jurisdiction—Civil Procedure Code (Act XIV of 1882)  
ss. 284, 285.*

Where the same property is under attachment by two Courts of different grades, a sale effected by the Court of lower grade is not a nullity.

Section 285 of the Code of Civil Procedure is a directory section dealing with procedure, and does not take away the jurisdiction to sell conferred on the Court by section 284.

APPEAL under section 15 of the Letters Patent by the defendants, Gopi Chand Bothra and others.

The plaintiff, Kasimunnessa Khatun, brought a suit out of which the present appeal arose, for the recovery of possession of certain immovable properties alleging that she had purchased them on the 10th of December 1889 at a sale held by the Munsif of Serajgunge in execution of a decree obtained against the former owners, Syed Obedulla and others, that she had been put in possession by the Court on the 12th of January 1891, and that she had been dispossessed by the defendants in Assin 1299.

The defendants alleged, *inter alia*, that the alleged purchase by the plaintiff was a *benami* transaction, and that the property in suit had been attached by the Subordinate Judge of Pubna in execution of a decree obtained by Rai Dhanpat Singh Bahadur against Syed Obedulla and others, and that in order to protect the properties they were sold in execution of a fraudulent and collusive decree obtained against the said Obedulla and others and purchased by the plaintiff *benami* for them.

\* Letters Patent Appeal No. 120 of 1906, in Appeal from Appellate Decree No. 2451 of 1904.

At the trial before the Munsif, it appeared that the attachment by the Subordinate Judge's Court in execution of Dhanpat Singh's decree was made in July 1888, but that further proceedings were stayed by an injunction issued by the Subordinate Judge in another suit; it further appeared that the attachment under which the plaintiff purchased was made by the Munsif of Serajgunge in July 1889. On these facts it was contended before the Munsif, that the Munsif of Serajgunge had no jurisdiction to sell the properties, and that the plaintiff had acquired no title by her purchase. The Munsif however overruled all the contentions of the defendants, and made a decree in favour of the plaintiff.

The defendants appealed, and their appeal was dismissed by the Subordinate Judge.

The defendants then appealed to the High Court. This appeal was heard by Mr. Justice Geidt sitting singly, and his Lordship affirmed the decision of the Subordinate Judge and dismissed the appeal. Against this last decision the defendants preferred the present appeal under section 15 of the Letters Patent.

*Mr. Hill (Babu Naresh Chandra Sen Gupta with him)*, for the appellants. The sale at which the plaintiff purchased was without jurisdiction, the property having been at the date of the sale under the attachment issued by a Court of superior grade: the Munsif, under section 285 of the Code, had no power to sell it. This view is supported by the decisions of the Allahabad High Court, and the earlier decisions of the Madras High Court: *Har Prasad v. Jagan Lal* (1), *Balkishen v. Narain Das* (2) and the cases there followed. The Calcutta High Court and the Bombay High Court have no doubt held that such a sale is not void, and the Madras High Court in *Kunhayan v. Ithukutti* (3) has also taken the same view; but they hold that whether the inferior Court has jurisdiction or not would depend upon whether it had notice of the proceedings in the Court of superior grade. It is submitted, however, that jurisdiction cannot depend upon notice; this is pointed out by Farran C.J. in the latest case on

(1) (1904) I. L. R. 27 All. 56.

(2) (1896) I. L. R. 18 All. 348.

(3) (1898) I. L. R. 22 Mad. 295.

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the point in the Bombay High, Court *Abdul Karim v. Thakor-  
das Tribhovan Das* (1), and his Lordship's observations throw  
doubt on the correctness of the earlier cases.

*Babu Harendra Narayan Mitter*, for the respondent, was not  
called upon.

MACLEAN C.J. I propose to deal with this case very shortly,  
because I think, so far as this Court is concerned, the matter is  
concluded by authority, and I have no desire to multiply  
them. The question in short, which we are asked to decide, is  
whether where the same property is under attachment by two  
Courts of different grades, a sale effected by the Court of a  
lower grade is a nullity. If the matter was *res integra* and apart  
from authority, my view would be that the jurisdiction con-  
ferred upon the Court to sell by section 284 of the Code of Civil  
Procedure is not taken away by the provisions of section 285.  
I think the language of section 285 is amply met by treating it  
as a directory section dealing with procedure, and not intended  
to take away the jurisdiction which had been conferred by the  
previous section. This view enables us to give effect to both these  
sections of the Code. If jurisdiction is given by one section of  
an Act, and it is contended that it has been taken away by  
another and subsequent section, it must be shown by the clearest  
language that this has been done.

But, so far as this Court is concerned, the matter is amply  
covered by authority. The case of *Bykant Nath Shaha v. Rajen-  
dro Narain Rai* (2) seems to be a clear authority in favour of the  
view I have expressed. That has stood the test now of twenty-  
two years, and has not been challenged. In the case of *Kashy  
Nath Roy Chowdhry v. Surbanand Shaha* (3), in the same volume,  
I find this at page 321: "It must therefore be now taken to be  
settled law that when a property is sold in execution of a decree,  
it cannot be sold again at the instance of a decree-holder,  
who had attached it before the attachment effected by the  
decree-holder under whose decree it is actually sold." That

(1) (1896) I. L. R. 22 Bom. 88.

(2) (1885) I. L. R. 12 Calc. 333.

(3) (1885) I. L. R. 12 Calc. 317.

case has been practically followed by several cases in this Court. I may perhaps refer to the cases of *Dwarka Nath Dass v. Banku Behari Bose*(1), which, though it does not deal with practically the same point, depended upon the same principle, and of *Ram Narain Singh v. Mina Koery*(2) which certainly is in point. Then there are three or four decisions in the Bombay High Court culminating in the decision in *Abdul Karim v. Thakordas Tribhoran Das*(3) in which the authorities were reviewed, and the Court there expressed the same view that I am expressing to-day. So far as regards the Madras High Court, some of its earlier decisions were against this view, but in the case of *Kunhayan v. Ithukutti*(4) the view taken by this Court has been followed. The only High Court in India which takes a different view is the Allahabad High Court. With great deference to the learned Judges who have decided three or four cases touching the same question, in that Court, I respectfully differ. The result therefore is that the decision of Mr. Justice Geidt is quite right, and the appeal must be dismissed with costs.

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HOLMWOOD J. I agree.

*Appeal dismissed.*

S. CH. B.

(1) (1891) I. L. R. 19 Calc. 651.

(3) (1896) I. L. R. 22 Bom. 88.

(2) (1897) I. L. R. 25 Calc. 46.

(4) (1898) I. L. R. 22 Mad. 295.