

(1872) 01 PRI CK 0001

In the Privy Council

Anund Loll Doss

APPELLANT

Vs

Jullodhur Shaw and another

RESPONDENT

Date of Decision : 31-01-1872

Acts Referred:

Citation : 14 MIA 543

Hon'ble Judges : James William Colvile, Montague Edward Smith and Robert Porrett Collier, JJ.

Judgement

1. The facts under which this question arises may be thus, shortly stated:--A obtains an execution against his debtor in the form of an attachment against the debtor's real property. The debtor, with the consent of A, makes a private sale of the property, and out of the proceeds satisfies the debt, but no application is made to the Court for the confirmation of the sale, or for the removal of the attachment, and the attachment still remains, at all events formally, in force. Subsequently B, another creditor, obtains an attachment upon another judgment. He proceeds to a judicial sale, treating the former sale as void; and the question is whether the purchaser under the second sale has a good title and is entitled to say that the prior sale was to all intents and purposes void as against him? Their Lordships adopt the View taken by the late Norman, J., in the first instance, and by the majority of the Court above, (including the Chief Justice, upon appeal. The question turns mainly upon the interpretation of two sections of Act VIII of 1859, under the head "Execution of decrees for money by attachment of property," and in construing these sections, it should be home in mind that we are not dealing with provisions prescribing the mode of administering property amongst creditors generally, but with provisions prescribing the rights of particular creditors who have obtained judgments and executions.

2. Now, the sections alluded to are in these terms. S. 235:-- "Where the property shall consist of lands, houses, of other immoveable property, the attachment shall be made by a written order prohibiting the defendant from alienating the property by sale, gift, or in any other way, and all persons from receiving the same by purchase, gift, or otherwise." S. 240 say:-- "After any attachment shall

have been made by actual seizure, or by written order as aforesaid, and in the case of an attachment by written order after it shall have been duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, or otherwise, and any payment of the debt or debts, or dividends, or shares to the defendant during the continuance of the attachment shall be null and void."

3. The question is whether those words, "any private alienation of the property attached, whether by sale, gift, or otherwise, shall be null and void," are to be taken in the widest possible sense as null and void against all the world, including even the vendor, or to be taken in the comparatively limited sense attached to them by the Courts in India? Their Lordships adopt the language of the Chief Justice, who expresses his opinion that "the object was to make the sale null and void so far as it might be necessary to secure the execution of the decree; it relates only to an alienation which would affect the creditor who obtained the attachment." That appears to their Lordships to be the true meaning of the section. It could scarcely be held, in fact it was scarcely maintained in argument, that a sale made to a bona fide purchaser by the vendor could be set aside by the vendor himself; the words must, therefore, necessarily be read with some limitation. It appears to their Lordships that their construction must be limited in the manner indicated by the Chief Justice, on the ground that they were intended for the protection of the creditor who had obtained an execution, and not for the protection of all persons who at any future time might possibly obtain executions.

4. Reference has been made to s. 271, which is to this effect:-- "If, after the claim of the person on whose application the property was attached has been satisfied in full from the proceeds of the sale, any surplus remain, such surplus shall be distributed rateably amongst any other persons who, prior to the order for such distribution, may have taken out execution of decrees against the same defendant, and not obtained satisfaction thereof." This section only applies where there has been a judicial sale, and appears to their Lordships to have little or no bearing on the question in the present case, which is, whether or not under the circumstances a private sale was valid.

5. Their Lordships understand that the Courts in India have generally proceeded upon the view taken by the Chief Justice and the majority of the Court, and would be unwilling to interfere with an established course of practice unless they came to a very clear opinion that it was wrong. Under these circumstances their Lordships will humbly advise Her Majesty that the decree of the High Court should be affirmed, and this appeal dismissed with costs.

1 In the report of the case before stated to have been on the 22nd of the High Court, the Sheriffs sale was February.