

(1919) 07 AHC CK 0038
In the Allahabad High Court

Gopal Prasad

APPELLANT

Vs

Kashinath and Another

RESPONDENT

Date of Decision : 11-07-1919

Acts Referred:

Citation : AIR 1920 All 356 : 52 Ind. Cas. 343

Hon'ble Judges : Stuart, J; Ryves, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Kashi Nath brought a suit against Keshab Deo and others and attached before judgment two shops and other property belonging to the defendants on the 20th of August 1909 under the order of the Subordinate Judge of Aligarh. On the 27th of August 1909 the Subordinate Judge set aside that order. It appears that he did so owing to his having misunderstood an order of the High Court. The High Court ordered the attachment to be restored on the 16th of March 1910. In the interval between the 27th of August 1909 and the 16th of March 1910 when as a matter of fact there was no order in existence attaching the property, Gopal Prasad, the plaintiff-appellant here, purchased the two shops in dispute. In execution of the decree against Keshab Deo and others it was sought to attach and bring these two shops to sale. Gopal Prasad objected that they were his property and on his objection being disallowed, brought this suit for a declaration that they were not liable to sale in execution of the decree. The lower Court has dismissed the suit on a single ground, namely, that it must be held in law that the shops were under attachment during the whole period from 20th of August 1909, because the order of the High Court of the 16th of March 1910 was to restore that attachment which had, as a matter of fact, been removed by a mistake and to put back the parties into the position which they had occupied on the 20th of August 1909. The lower Court has decided this case on the authority of two cases of this Court, namely, Ali Ahmad Khan v. Bansidhar 1 Ind. Cas. 951 : 6 A.L.J. 434 : 31 A. 367 and Aziz Bux v. Kaniz Fatima Bibi 15 Ind. Cas. 49 : 10

A.L.J. 43 : 34 A. 490.

2. On appeal before us it has been argued that those two decisions do not apply. And secondly it has been argued that in any case, as there is no provision in the CPC itself, no order even by the High Court could bind innocent third parties who were no parties to the suit. In this particular suit there is no finding of collusion or anything of that kind between Gopal Prasad and the defendants. It is argued that it is extremely hard that an outsider who had no connection with the judgment-debtor and who purchased bona fide a property which he knew was not then under attachment, should find the sale rendered void because subsequently a previous attachment which had been removed was restored. The appellant must obviously have one's sympathy, but the question remains whether in law he is not bound by the subsequent order restoring the attachment. The view in Calcutta seems to have been consistent since 1874. See *Mahomed Warns v. Pitambur* Sen 21 W.R. 435, *Banomali Rai v. Prosunno Narain Chowdhry* 23 C. 829 : 12 Ind. Dec. (n.s) 551, *Ram Chandra Marwari v. Mudeshwar Singh* 33 C. 1158 : 10 C.W.N. 978. The case in *Bonomali Rai v. Prosunno Narain Chowdhry* 23 C. 829 : 12 Ind. Dec. (n.s) 551 was approved of by this Court in *Ali Ahmad Khan v. Bansidhar* 1 Ind. Cas. 951 : 6 A.L.J. 434 : 31 A. 367. But we find apart from these oases in this Court relating to property belonging to Keshab Deo and others which was similarly affected by this attachment. In one of these cases there was also a finding by the Court below that the purchaser in that particular case had been colluding with the defendants. The decision, therefore, in that case is not quite in point here, but in both the other cases, namely, Original Suit No. 86 of 1915 decided in first Appeal No 381 of 1915 and Original Suit No. 22 of 1916 decided in First Appeal No. 238 of 1916, the Court below held that the purchase in those two particular oases was rendered void by the order of the High Court restoring the attachment, and that was the only point decided in both appeals here. In both those cases the view of the lower Court was held to be correct. That being so, it seems to us that the appeal must fail. We dismiss it with costs.