

(1909) 07 AHC CK 0028
In the Allahabad High Court

Musammat Dropati Bibi and Another

APPELLANT

Vs

Babu Ram Rajpal Rai Bahadur

RESPONDENT

Date of Decision : 16-07-1909

Acts Referred:

Citation : 3 Ind. Cas. 31

Hon'ble Judges : Tudball, J; Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The facts of this case are these. On the 24th of December 1898 Chuni Lal, the predecessor-in-title of the plaintiffs-appellants, obtained a money-decree against Sham Lal, Luchmi Narain and others. In the suit in which that decree was passed an application had been made for attachment before judgment and in pursuance of that application certain shops were attached on the 11th of June 1898. Several applications were made for execution of the decree but they were infructuous. Finally the plaintiffs applied for sale of the attached shops. The defendant Ram Rich pal thereupon preferred an objection and on his objection being allowed on the 15th of September 1906, the suit out of which this appeal has arisen was brought by the plaintiffs, on the 17th of May 1907, for a declaration that the shops in question were liable to sale in execution of their decree. The title set up by Ram Richpal was acquired by him under the following circumstances One Musammat Janki obtained a decree against Lachmi Narain and others from the Court of Small Causes at Cawnpore on the 10th of June 1898. That decree was transferred for execution to the Court of the Munsif of Farrukhabad-and the shops in question were sold by auction on the 27th of July 1899. One Khunni Lal became the purchaser at the sale and subsequently sold the shops to the respondent Ram Richpal. It was on the strength of this auction purchase that Ram Richpal objected to the sale of the property in execution of the plaintiffs' decree. The plaintiffs' contention was that as the property was under attachment in execution of their decree by an order of the Subordinate Judge of

Farrukhabad, the Munsif of Farrukhabad had no jurisdiction, having regard to the provisions of Section 285 of Act XIV of 1882, to sell the property, and, therefore, the sale "by him was a nullity, and Khunni Lal, the vendor of Ram Richpal, acquired no title under it.

2. The Court of first instance decreed the claim but the lower appellate Court set aside the decree of that Court and remanded the case to it under the provisions of Section 562 of Act XIV of 1882. From this order of remand the present appeal has been preferred.

3. In the first place we may observe that the order of remand was bad inasmuch as there was only one point to be determined namely the extent of Lachmi Narayan's share and as to that an issue might have been referred to the Court of first instance.

4. In the next place we are of opinion that the view taken by the Court below is erroneous. The property in question was attached before judgment in the suit of Chunni Lal. When he obtained his decree a re-attachment of the property was not necessary, vide Section 490 of Act XIV of 1882 so that after the passing of the decree the attachment already made was to be deemed an attachment in execution of the decree. On the 23rd of January 1899 an application was made for execution of Chunni Lal's decree and it was prayed that the property already attached might be sold by auction. It appears from the execution proceeding's that on the 17th of July 1899 the pleader for the decree-holder informed the Court that as the same property was to be sold in execution of a decree held by one Jugal Kishore, he would apply for a ratable distribution of the sale proceeds under the provisions of Section 295. The proceedings relating to the execution of the decree of Jugal Kishore were pending in the same Court and, therefore, the Court made an order that the case should be put up along with the execution case of Jugal Kishore and that if a sale took place in execution of the decree in Jugal Kishore's case the question of ratable distribution would be determined. The plaintiffs' application for execution remained pending till the 23rd of November 1899 when it was finally struck off the file for reasons to which it is not necessary to refer. It is thus clear that at the date on which the disputed property was sold under the orders of the Munsif the same property was under attachment in execution of decrees pending in the Court of the Subordinate Judge. Section 285 of the Code of Civil Procedure, 1882, was, therefore, clearly applicable and under the rulings of this Court, the latest of which is the case of Har Prasad v. Jagan Lal 27 AD 56 in which other rulings of this Court on the point are cited, the Munsif had no authority or jurisdiction to sell the property and the sale to Khunni Lal was a nullity and no interest in the property passed thereunder to him. The learned Subordinate Judge ignored the rulings of this Court and preferred to follow a ruling of the Calcutta High Court. He was bound as an officer subordinate to this Court to follow the rulings of this Court, although they might be in conflict with the rulings of other High Courts. In our judgment the defendant Ram Richpal as purchaser from Khunni Lal acquired no title to the

property in question as the Munsif had no jurisdiction to sell it, and the only Court which had authority to sell it was the Court of the Subordinate Judge in which the decree of the plaintiffs was pending and in which the plaintiffs had applied for sale of the property. The defendant, however, contends in the appeal preferred by him, (appeal from Order No. 5 of 1909), that the suit is time-barred. He urges that the claim is in substance a claim to set aside the sale at which the defendant's vendor Khunni Lal purchased the property and ought to have been brought within one year from the date of the sale. We do not agree with this contention, as in view of the rulings of this Court, to which we have referred above, the sale to the defendant's vendor was a nullity and it was not, therefore, to set it aside.

5. The result is that we allow the appeal, reverse the order of the Court below and restore the decree of the Court of first instance with costs in all Courts including in; this Court fees on the higher scale.