
(1890) 05 AHC CK 0002
In the Allahabad High Court
Case No : Second Appeal No. 892 of 1888

Sita Ram

APPELLANT

Vs

Shib Singh

RESPONDENT

Date of Decision : 13-05-1890

Acts Referred:

Citation : (1890) 05 AHC CK 0002

Final Decision : Dismissed

Judgement

Sir John Edge, Kt., C.J. and Brodhurst, J.—This was a suit for rent. The plaintiff, it appears, was lambardar, but whether he was suing as the agent of the co-sharers, or as the zamindar, and himself entitled to the rent sued for, does not appear. That question may have an important bearing in the execution department. The rent in question had been attached by one Kuar Daryao Singh, on the 2nd August 1886, for a debt by the present plaintiff to him. It is contended that by reason of s. 268 of the CPC that attachment so long as it existed barred a suit by the plaintiff for the rent which was attached. That contention is mainly based on cl. (a) of s. 268 of the Code of Civil Procedure. If the Legislature had intended that, whilst a debt was under attachment, the person to whom the debt was originally owing should be barred from bringing a suit in respect of it, we would expect the Legislature to have used some such words as:-- "During the existence of the attachment no suit shall be brought by the creditor against the debtor in respect of the debt attached." What s. 268 prohibits is the recovery of the debt and the payment of it by the debtor to the creditor. The debtor had an easy course provided for him under s. 268, as under that section he could have paid the money into Court and thus have avoided liability in this suit. That was not done here. Mr. Chaudhri contends, and we think with force, that if his client, the plaintiff, had not brought the suit when he did, a suit subsequently brought might be barred by limitation. On the other hand, Mr. Reid for the defendant-appellant says that the case would come within s. 15 of the Limitation Act. We do not think the case would be within s. 15 of the Limitation Act. We think it would be to read a good deal into s. 268 of the CPC if

we were to hold that an order of attachment under that section was equivalent to an injunction or an order staying a suit. The point seems to be a novel one, and, giving it our best attention, that is the opinion at which we have arrived. We express no opinion as to what may be the result of any proceedings in execution. We dismiss the appeal with costs.