

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Saroda Prosaud Mullick (Manager of the person and estate of Sreenath Sannyal, a lunatic) v. Luchmeeput Sing Doogur and others, from the High Court of Judicature at Fort William, in Bengal; delivered 3rd February, 1872.*

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Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

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SIR LAWRENCE PEEL.

IN this case Mooktakashee Dabee, the manager of the estate of her husband—a lunatic—(of which the Appellant is now manager) obtained a Decree in the Zillah Court of East Burdwan against Jodoonath Sannyal, for upwards of 2 lacs of rupees.

A small sum only having been realized in that Zillah, proceedings were taken to obtain execution of the Decree on properties of the Defendant Jodoonath Sannyal within the jurisdiction of the Zillah Courts of Moorshedabad, Hooghly, and Dinagepore. It is with reference to what was done in Dinagepore that the questions arise.

In March 1864 a certificate and other papers were sent by the Judge of East Burdwan to the Judge of Dinagepore, the terms of which will be hereafter adverted to. Some time afterwards, but the precise date is not given, the Judge of Dinagepore attached the lands of the Defendant in his Zillah, which form the subject of the suit. On 24th June, 1865, another certificate was sent

from the Judge of Burdwan, and on the 4th September the lands of the Defendant were sold under the Decree to Mooktakashee Dabee, the Decree-holder, and by an Order of the Judge of Dinagepore, of the 4th December, 1865, the sale was confirmed, and a writ of possession directed.

It appears that the Judge of Dinagepore, in pursuance of the Order of the Judge of Burdwan, required Mooktakashee Dabee to give security for the proceeds of the sale before he would allow actual possession to be given to her. Several months elapsed before she found the security, and meanwhile the present Defendants, by orders of the Zillah Judge of Dinagepore, obtained attachment and sale of the same lands under a Judgment obtained by them against the same debtor, Jodoonath Sannyal; and on the 6th January, 1866, the lands were sold in execution of their Decree, and purchased by themselves, and possession afterwards given to them.

Mooktakashee then brought this suit against the present Defendants (the Respondents), asserting her title under the first Judgment sale. It is conceded that her title must prevail, unless the sale under her execution can be invalidated.

The ground on which the Zillah Judge directed the giving of possession under the second sale to the Respondents was, that Mooktakashee having failed to give security, the sale to her became null. It is plain that this ground is utterly untenable. The security was ordered for the protection of the lunatic Plaintiff against misappropriation by his manager. It was not a proceeding affecting the Judgment debtor, and was entirely collateral to the course of the suit between the Judgment creditor and Judgment debtor. The omission to give this security could not in any way affect the title which had vested in the Plaintiff by the previous sale. This decision of the Zillah Judge had the effect of causing the omission by the lunatic's manager to do an act intended to secure the fruits of his Judgment to him, to operate so as to deprive him altogether of them, and hand them over to the second Judgment creditor. It is much to be lamented that such a misconception should have taken place.

Their Lordships also consider that the Zillah Judge was in error in granting the Order for the second sale under the Respondent's attachment, and confirming the purchase by him, when the sale of the same lands had already taken place under Mooktakashee's attachment, and the purchase by her under that sale had been confirmed and had not been set aside. Their Lordships cannot find that this course was in accordance with the Code of Procedure. The title had vested in Mooktakashee by the sale under her attachment, and until it was set aside there was nothing upon which the second sale could operate. This course inevitably created a conflict between the two Decree-holders who became purchasers at the judicial sales, under their respective attachments, and led to the erroneous Order of the 19th June, 1866, which ordered the possession to be given to the Respondent. Such a course also is in any case clearly contrary to the interests of debtors as well as creditors, as it is obvious that when property is offered at a second sale, with the cloud cast on the title by the subsisting first sale, it would be likely to go for an inadequate price.

In the present Appeal, however, it was contended at their Lordship's Bar, by Sir Roundell Palmer, that the proceedings in the Court of Dinagepore, which resulted in the sale to the Plaintiff, were without jurisdiction, and that the sale under them was invalid on the ground of "a radical vice" in the proceedings when the matter was first transmitted by the East Burdwan Judge to Dinagepore in this:—that the lands of the judgment debtor were ordered to be attached, not as the first step in an execution which might terminate in a sale, but by way of sequestration or injunction only, and therefore that the proceedings were not an execution or a step in it within the meaning of the Civil Procedure Code.

It is plain, however, on reference to the Code, that property may be attached without view to immediate sale. The group of Clauses, Sections 232 to 245, under the heading "Of the Execution of Decrees for money by Attachment of property," prescribe the manner of attaching

the various kinds of property and dealing with them when attached. Section 243 shows how debts and immoveable property are dealt with, and provides modes of satisfying the Decree by them, without sale. Another group of Sections, 248 to 272, headed "Of sales in execution of Decrees," provide the procedure in case it becomes necessary to sell.

It is obvious from these Sections that, in the case of lands, the process of attachment, and the order for sale may be distinct and separate, and that there may be a complete execution of a Decree under an attachment without any order for sale.

Then procedure is provided for the execution of Decrees out of the jurisdiction of the Court in which they are made. Section 284 and following clauses empower the Judge on application "unless there be any sufficient reason to the contrary," to transmit a copy of the Decree with a certificate that satisfaction of it has not been obtained in his jurisdiction, and a copy of any order for execution of such Decree that may have been passed, "to any Court to which the applicant may wish the Decree to be executed." The Court to which they are sent is to file them, and Section 287 enacts that the copy of any Decree, or of any order of execution, when filed in the Court to which it has been transmitted for execution, shall for such purpose have the same effect as a Decree or order for execution made by such Court.

The Certificate or order of the Judge of Burdwan, of 19th March, 1864, sent to the Judge of Dinagepore, contains, in substance, a recital or statement of the Decree of the East Burdwan Court, the amount recovered by execution, the balance due, and that the Decree-holder had given a list of properties in Zillahs Moorshedabad, Hooghly, and Dinagepore, and then declares that "a certificate, &c., are sent" to Moorshedabad, under Sections 284 and 285, requesting that properties in that district may be attached and brought to sale, and that certificates, &c., be sent under Section 235 for attachment, with a view to prevent alienations of properties, in Zillahs Hooghly, and Dinagepore. It ends thus, "after-

wards, when proceedings for attachment and sale of the properties in Moorshedabad shall have been completed, the proper order will be passed on the Decree-holder's application."

The objection was, in effect, that this order treated the attachment directed to be made in Dinagepore as an injunction or sequestration only. Their Lordships, however, think that this was not so, but that it was meant that the attachment should be a proceeding in execution of the Decree. The proceeding was, on the face of it, declared to be a direction to attach under section 235; and that section only authorizes the attachment as a step in execution. No doubt, every attachment involves an injunction, which is indeed one of its necessary effects. But when an act of a Court can be so construed as to have an operation consistently with law, it would be contrary to ordinary rules of construction to attach to it another signification which would altogether destroy its effect. Their Lordships, therefore, consider that what the Court intended to do was to transmit the proceedings to the three Zillahs for execution, with a direction that the first process of execution, viz., by attachment, should take place in all, but that further proceedings under the attachments should not be taken in Hooghly and Dinagepore until the result of the completed execution in Moorshedabad was known.

It has been already pointed out that the procedure of the Code contemplates, in the case of lands, the issuing of separate orders, subsequent to the attachment, for the sale or other disposition of them.

A more important point involved in the case is whether the transmission could be made to the three Zillah Courts concurrently, for the purpose of execution. On consideration of the Code their Lordships can find nothing to prevent this being done. On the contrary, the procedure is well adapted to allow of it, and of its being done most beneficially for the creditor, and without injustice to the debtor. If it were not so, the debtor might be able to get rid of his property before it could be attached. On the other hand, there is provision for the protection of the debtor, for the issuing of the execution in more Zillahs

than one is made subject to the control of the Judge, who may refuse to do so, "where he saw there was any sufficient reason to the contrary" (section 286). Again, after the attachments have been granted, if there should be any ground of complaint, the debtor and any parties interested may apply, under the provisions of the Code, to remove or stay proceedings under them.

It would, no doubt, in many cases, be a right exercise of the discretion of the Court not to act on the power, and to refuse to send a Decree for concurrent execution into several places; and when it did act on it, it would be, in many cases, proper to impose terms on Decree-holders, that they should not proceed to sale under all the attachments at once.

This is really what was meant to be done here, although it was not done in a very good and satisfactory form.

The case is thus reduced to the objection, that a copy of the Decree was not transmitted to Dinagepore.

The High Court rest their first Judgment on the ground that no copy of the Decree or of the Certificate, that satisfaction had not been obtained, was sent. The latter document clearly was sent. In the Judgment on review, Mr. Justice Jackson came to the conclusion that both were transmitted. Mr. Justice Kemp alone retained his former view.

Assuming that if no copy of the Decree was sent, the attachment made at Dinagepore would be without valid authority, which their Lordships do not find it necessary to determine, it lies on the Defendant to prove that it was not transmitted. The Judge at Dinagepore acted on the Certificate by attaching the lands, and afterwards sold under that attachment. The maxim, therefore, *omnia præsumentur rite esse acta*, must prevail until the contrary is shown. It certainly is not shown by the document of 19th March, 1864, for it is there stated that "Certificates, &c.," were sent; nor by the Memorandum of the attachment (Appendix 23) which refers to the rookabaree "and other papers" having arrived. On the contrary, it may be presumed from them that all necessary documents were transmitted.

It is said that it must be inferred from the order (Appendix 19) which preceded the document of the 19th March, that it was not intended to send the copy of the Decree to Dinagepore. This, perhaps, may be inferred from that document taken alone, but it would not be safe to act on such an inference to annul the attachment and sale, especially when it is consistent with the language of the subsequent documents, that the copy was sent with the other papers on the 19th of March; or, at all events, before the attachment was made.

On the whole, their Lordships consider that the appeal should be allowed; and will humbly advise Her Majesty that the Decree of the High Court should be reversed, that the Decree of the Principal Sudder Ameen should be executed, and that the Appellant should have the costs of the litigation in India and of this appeal.

