

(1910) 03 AHC CK 0001

Allahabad High Court

Case No: None

Rai Bahadur Sabu Lata
Pershad and Another

APPELLANT

Vs

Sheikh Zahur-ud-din
and Others

RESPONDENT

Date of Decision: March 4, 1910

Citation: 6 Ind. Cas. 113

Hon'ble Judges: John Stanley, C.J; Griffin, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal is connected with First Appeals Nos. 113 and 114 of 1909. The question involved in them is one of contribution and the claim arises under the following circumstances. One Ram Mohan Lal owned shares in five villages. He was indebted to one Nand Kishore who brought a suit to realise the amount of the debt. On the 8th of May 1889, Nand Kishore obtained an order for attachment of the property of Ram Mohan Lal before judgment. On the 28th of May 1889, he obtained a decree. This was a simple money decree. On the 25th of August 1905, the interest of Ram Mohan Lal in the five villages was advertised for sale. Prior to this, namely, on the 9th of October 1898, the plaintiffs-appellants purchased the interest of Ram Mohan Lal in one of the villages and to save that property from sale under the attachment, they on the 21st of August 1905, paid the amount of Nand Kishore's decree. They then instituted the suit out of which the appeals have arisen to obtain contribution from transferees from Ram Mohan Lal of his interest in the other villages.

2. Mr. Lalit Mohan Banerji, on behalf of the respondents in Second Appeal No. 114 of 1909, raised a point which was not considered in the Courts (sic). His contention was that the attachment of the villages in question did not create any lien or charge upon them, and that consequently, as between the plaintiffs-appellants and the

respondents, there was no common burden which the plaintiffs-appellants discharged so as to give them a right to call upon the defendants-respondents for contribution.

3. We think that this contention is well-founded. The right to contribution arises when two or more persons are liable to discharge a common burden. The principle is that they should discharge it rateably in accordance with the equitable principle, that equality is equity and if one discharges the entire burden, he has a right of contribution against the others; or in other words, as the doctrine has been stated where a common liability rests on several persons in favour of a simple claimant, equity will enforce such liability upon all the class in accordance with the maxim, equality is equity." In this case we fail to discover that there was any common burden. In the case of *Moti Lal v. Karab-ud-dini* their Lordships of the Privy Council held that attachment only prevents alienation and does not confer a title. This ruling of their Lordships was followed in the case of *Frederick Peacock v. Madan Gopal* It was there held by a Full Bench, overruling the earlier decision in *A.B. Miller v. Lukhimani Debi* that an attaching creditor does not obtain by his attachment any charge or lien upon the attached property. The decree-holder then in the case before us did not by the attachment acquire any lien or charge upon the property of his judgment-debtor. That property when sold by the latter became vested in the transferee's subject only to the right which the decree-holder had of executing his decree and selling the property for the realisation of his debt. No steps, however, were taken for the purpose of carrying out a sale in execution of the decree, beyond the fact that the property was advertised for sale. Before a sale took place the plaintiffs-appellants voluntarily paid the amount of the decree and relieved the property from the attachment. The defendants-respondents were never liable to satisfy that decree which, as we have said, was a simple money decree. The sole liability to discharge the decree rested upon the judgment-debtor. The fact that the plaintiffs-appellants, in order to protect from sale the property purchased by them, paid the amount of the decree and so relieved the entire property from the attachment does not give them a right of contribution. Under such circumstances there being no common liability, we are of opinion that a right of contribution did not arise, and upon this ground the appeal must fail.

4. An objection was filed under Order 41, Rule 22. In the lower appellate Court a decree was passed for Rs. 164 with proportionate costs etc. against *Zahur-ud-din* and *Fakhur-ud-din*. The contention is that no decree ought to have been passed against these parties and in view of what we have said above, this objection is well-founded.

5. We accordingly dismiss the appeal. We allow the objection and setting aside the decree of the lower appellate Court, dismiss the plaintiff's suit with costs in all Courts including fees in this Court on the higher scale.