

(1871) 01 CAL CK 0001

Calcutta High Court

Case No: Regular Appeal No. 93 of 1870

Indrachand Jahuri

APPELLANT

Vs

Prince Gholam
Mahomed

RESPONDENT

Date of Decision: Jan. 16, 1871

Final Decision: Dismissed

Judgement

Norman, J.

Now we may observe that the 205th section of Act VIII of 1859 declares what are the several species of property liable to attachment and sale under decree,—namely, lands, houses, goods, money, banknotes, Government securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public company or corporation, and all other property whatsoever, moveable or immoveable, belonging to the defendant, and whether the same be held in his own name, or by another person in trust for him, or on his behalf." Now we have no doubt but that a decree is property which falls within the description of other property" in section 205, and is therefore declared to be liable to attachment and sale in execution of a decree. But when the sections from 233 to 238 are read through carefully, it will be found that no one of these sections appears to be exactly applicable to such property as a decree. We think, however, that, assuming that none of these sections contain any provisions appropriate for the attachment of a decree, it must not be taken that a decree which falls within the class of subjects declared liable to attachment by section 205 is therefore not so liable. Of the several species of property, for the attachment of which provision is made by the several sections above mentioned, that which is most nearly analogous to the right of a decree-holder in a decree which is being executed in a Court of Justice, is a security in deposit in a Court of Justice, or money in a Court of Justice, or in the hands of any officer of Government which is or may become payable to the defendant. The attachment of such property is provided for by Section 237.

2. The attachment in the present case has been made in the manner prescribed by section 237, and we think that for the purpose of attaching the decree itself, and the money when it came into Court, the form of attachment u/s 237 is perhaps the most appropriate. A decree for money may be considered as consisting of two things: first, the debt due from the judgment-debtor to the decree-holder; and, secondly, the security for that debt by a decree which renders it capable of being enforced. The one being capable of separation from the other, the two things are distinct, one being a debt, the other being the security for that debt. Now, if a decree is to be treated merely as a debt, and if the only mode of attaching it is by an order for attachment u/s 236,--namely, by a written order prohibiting the creditor from receiving the debt, and the debtor from making payment thereof," the security of a creditor attaching a decree will be very imperfect, because the attachment would not stay execution of the decree; and if the execution proceeds, and money is realized and paid into Court under the decree, if the decree-holder disregards the order of the Court, and applies to take out the money in contempt of the order of attachment served on him, he can do so, unless there is some order recorded in the Court executing the decree, prohibiting the decree-holder from receiving the money out of Court. There must therefore be some means of attaching the decree itself, more effectual than the ordinary attachment u/s 236. No doubt it would be prudent and proper in case of attachment of a decree to serve the judgment-debtor with an order u/s 236, in order to attach the debt due from him. But the want of such order will not affect the attachment of the decree.

3. In my opinion the attachment in the present case was valid and effectual. Prince Gholam Mahomed has taken out of Court money which was subject to the lien and attachment of the plaintiff Indrachand Jahuri. I think he is therefore liable to refund to Indrachand the money so taken, to the extent of his lien, and the Subordinate Judge was right in decreeing the plaintiff's case.

4. This appeal must therefore be dismissed with costs.

Bayley, J.

I concur.

Mitter, J.

I am of the same opinion. I think that the objection now taken before us was never pressed by the defendant in the Court below; and as it is not pretended by him that he took the assignment from Prince Rahimuddin without being aware of the attachment, I think he ought not to be permitted to take that objection now. Besides the mode of attachment adopted in this case is the one usually adopted in the Mofussil Courts, and I do not think that the appellant has been in any manner prejudiced by the irregularity he complains of, supposing it to be an irregularity at all.