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decision did not go further than that in No. 279 of 1868. The account taken in the present case is also the same, that is, principal and interest on the one side, and rents and profits on the other; and as the mortgagee is to be charged with rents and profits it would not be just to stop his interest, and consequently the rule of Hindú Law cannot be applied.

The appellant, the mortgagee, has, it appears, only been charged with the rent of the shop from October 1865; but it is stated in the plaint that he took possession of the shop when the mortgagor did not pay according to the contract. He should have been charged with rent for the shop from the time he took possession of it. We, therefore, remand the case for the court below to retake the account, according to the view above expressed.

The appellant has failed entirely, and the respondent has failed in the point he took: therefore, each party should pay his own costs of this special appeal.

NEWTON, J., concurred.

Special Appeal No. 376 *of* 1868.

Nov. 17.

MORO BA'LKRISHNA MULE .....*Appellant.*
SHÉK SA'HEB valad BADRUDDIN KA'MBLE...*Respondent.*

Suit to raise Attachment—Estoppel—Res judicata—*Judgment* inter partes *and* in rem—*Privity.*

The plaintiff sued to raise an attachment placed upon a certain house, but failed in the lower court, and the decision of the lower court was confirmed upon appeal. The house was then sold. The plaintiff sued the purchaser to recover possession of it.

Held that he was not estopped from suing by the decision in the former suit refusing to raise the attachment, and that such decision could not be given in evidence in the latter suit.

THIS was a Special Appeal from the decision of A. Bosanquet, Acting Judge of the District of Thánáá, in Appeal Suit No. 178 of 1867, reversing the decree of the Munsif of Kalyán.

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The suit was filed by Shek Sáheb, to recover possession of a house sold to him by Dagḍu Lálu and Khimi Telli, and of which he had been dispossessed at the instance of the defendant, Moro Bálkrishna Mule, who had purchased the house at an auction sale, held by the Civil Court in execution of a decree obtained against Dagḍu Lálu by one Dádá valad Sidik.

The defendant answered that the plaintiff was estopped from maintaining his present suit, under Sec. 2 of Act VIII. of 1859, because the sale of the house to the plaintiff was declared fraudulent and void, in a regular suit brought by the plaintiff to raise the attachment placed by Dádá valad Sidik on the said house in execution of his decree; that the house was declared liable to meet Dádá's claim; that as the defendant purchased it at an auction sale held to satisfy Dádá's claim, his title to hold possession of the house was superior to that of the plaintiff.

The Munsif, Gopál Govind Phátak, rejected the claim, but the Judge awarded it, for the following reasons:—

"The suit, in which the decree, exhibit No. 38, was passed, was a suit in which this plaintiff sought the removal of an attachment placed on this house by Dádá, pleading this purchase from Dagḍu; but the Ṣadr Diváṇi Adálat confirmed this attachment. Neither this defendant nor Dagḍu was a party to that suit, and as this plaintiff could not have adduced this decree as evidence, if it had been in his power, so neither can this defendant avail himself of it against the plaintiff.

"The defendant has bought Dagḍu's interest, and stands in his place, but the plaintiff, in a suit instituted by him against Dagḍu &c., obtained from the Munsif of Kalyáṇ the decision, No. 34, to the effect that the sale of the house by Dagḍu's guardians to Shek Sáheb was for necessary purposes, and for the benefit of the infant Dagḍu, and that it was executed for valuable consideration, and for a fully adequate price. This decree was confirmed in appeal by the Judge (exhibit No. 45).

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"The defendant, therefore, in buying Dagḍu's right in the house, took nothing by his purchase; for Dagḍu had, at that time, no right in the house, it having been bought by the plaintiff.

"With regard to the *bonâ fide* character of the plaintiff's purchase I concur with the Munsif. I, therefore, reverse the Munsif's decree, and admit the claim with costs."

The Appeal was argued, on the 30th of September 1868, before COUCH, C.J., and NEWTON, J.

Vishvanáth Náráyaṇ, for the appellant:—The defendant purchased this property after the attachment placed on it was confirmed by the Ṣadr Court. The Calcutta High Court have ruled that property sold in execution of a decree passes to the purchaser, although the decree under which the sale took place be reversed subsequently to the sale: *Chunder Kant Surmah Talookdar* v. *Bissesur Surmah Chuckerbutty* (*a*); and this judgment was followed in *Jan Ali* v. *Jan Ali Chowdhry* (*b*). In this case the propriety of the attachment was once decided, and, therefore, it is good against those at least who first contested it. [COUCH, C. J.:—The plaintiff, failing against the judgment creditor, now tries to set aside the attachment as against the purchaser.]

Shántárám Náráyaṇ for the respondent.

Vishvanáth Náráyaṇ Manḍlik in reply.

Cur. adv. vult.

November 17. COUCH, C.J.:—In this case the appellant was a purchaser at an auction sale. The respondent claimed to remove the attachment, but he failed, and the Ṣadr Court confirmed the attachment. It is contended that the decision of the Ṣadr Court operated as an estoppel in this case. The parties to the attachment suit were the respondent and Dádá. The appellant was no party to it, but he purchased the property after the attachment was confirmed. It is urged that, although the appellant was no party to the suit, he ought to have the benefit of the decision as claiming under the attaching creditor; but the decree can be used as a judg-

(*a*) 7 Calc. W. Rep., Civ. R. 312. (*b*) 10 Calc. W. Rep., Civ. R. 154.

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ment binding upon the respondent only, as the appellant was not in any way a privy to Dádá. There are three kinds of privity, namely, by blood, law, and by estate. If there is in this case any privity by estate, it is with the judgment debtor, and the execution creditor had no estate, since he merely attached and sold the property, and his obtaining the proceeds of the sale did not make him a privy. One might suppose that, under other modes of procedure, authorities might be found on the subject; but the absence of authorities is accounted for by the fact that the judgment debtor was not made a party. The debtor should have been made a party to the former suit, but the suit was not so framed. The judgment, therefore, is not an estoppel at all, nor is it admissible in this case as evidence. The question then is, can it have any other effect? Mr. Justice Holloway, of the Madras High Court, has treated of judgments *in rem* in the case of *Yarakalamma Anakala* v. *Naramma* (*c*), and we concur in the opinion he has there expressed. The result, therefore, is that neither as a judgment *inter partes*, nor as a judgment *in rem*, is the former decision of use in this suit. The appellant thus fails on the point he has taken; and we must, therefore, confirm the decree of the lower Court with costs.

Decree confirmed.

Regular Appeal No. 8 *of* 1868.

Nov. 25.

THE GOVERNMENT OF BOMBAY .....*Appellant.*
DA'MODHAR PARMA'NANDA'S *et al.* .....*Respondents.*

Service Watan—*Resumption*—*Right of Females to hold Service* Watans —*Jurisdiction*—*Act* (*Bombay*) *VII. of* 1863.

The payment of a *hak* in respect of a *majumdári watan*, though charged on villages, is not "a share of the revenues thereof," within the meaning of Sec. 32 of (Bombay) Act VII. of 1863.

Government has no power to resume *majumdári watans* where it dispenses with the performance of services in respect of them, if the holders of such *watans* are ready and willing to perform such services.

(*c*) 2 Mad. H. C. Rep. 276.