

plaintiff might have claimed to be put in possession of the whole of the property sold, leaving the defendant to his remedy by a suit for partition (see also *Ram Sahye Bhukkut v. Lalla Laljee*(1)). But as the plaintiff has only asked for restoration of his half share, it will be sufficient if we reverse the decree of the District Court and restore that of the Subordinate Judge. The defendant to bear the costs of appeal and second appeal.

*Decree reversed.*

(1) I. L. R.S Calc. 149.

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### APPELLATE CIVIL.

*Before Mr. Justice Pinhey and Mr. Justice Nanabhai Haridas.*

PARVATI (ORIGINAL DEFENDANT), APPELLANT, *v.* KISANSING  
(ORIGINAL PLAINTIFF), RESPONDENT.\*

April 26.

*Decree—Sale pendente lite—Prior attachment—Lis pendens.*

On the 29th June, 1876, the plaintiff obtained a money decree by consent against Ramapa, the father-in-law of the defendant.

On the 24th of July, 1876, the plaintiff attached a house of Ramapa.

On the 12th October, 1876, the defendant sued Ramapa for maintenance, and alleged that the house in question was the property of her deceased husband and Ramapa, and she claimed the right to continue to live in it.

On the 10th of November, 1876, and during the pendency of the defendant's suit against Ramapa, the house was sold under the plaintiff's decree against Ramapa, and the plaintiff himself became the purchaser.

On the 20th of June, 1877, the defendant obtained a decree against Ramapa in terms of the prayer of her plaint.

On the 27th of August, 1879, the plaintiff brought the present suit to eject the defendant from the house.

*Held* that what the plaintiff bought from Ramapa was his right, title and interest in the house, which, being subject to the decree in the defendant's pending suit, the plaintiff's purchase was likewise subject to the same, and the circumstance that the plaintiff had placed a prior attachment on the house made no difference. The plaintiff therefore could not eject the defendant during her lifetime.

This was an appeal from the decision of C. F. H. Shaw, Judge of Belgaum, reversing the decree of R. S. Chinto Narayan, Joint Subordinate Judge of Belgaum.

This was a suit in ejectment. The plaintiff, Kisansing, alleged that he purchased a house at Belgaum at a court sale, but that

\*Second Appeal, No. 351 of 1881.

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the defendant, Parvati, resisted his getting possession of it. The defendant contended that the house belonged to her late husband and her father-in-law, Ramapa, against whom she had obtained a decree, and that the plaintiff's purchase effected during the pendency of her suit was subject to her decree.

On the 29th of June, 1876, the plaintiff obtained, by consent of the said Ramapa, a decree against him for the payment of Rs. 40. In execution of this decree the plaintiff attached the house in dispute on the 24th of July, 1876. On the 12th of October following the defendant sued Ramapa for maintenance. She alleged that her late husband and Ramapa were the owners of the house which Ramapa voluntarily gave up, and that she should be permitted to continue to live in it. On the 10th of November, 1876, the house was put up to auction by the civil court in execution of the plaintiff's decree against Ramapa, and he himself became the purchaser. On the 20th of June, 1877, the defendant obtained a decree against Ramapa in terms of her plaint. On the plaintiff going to take possession of the house, he was obstructed by the defendant. He made an application to the Court for the removal of her obstruction, but it was rejected on the 26th of August, 1878. The present suit was brought on the 27th of August, 1879.

The Subordinate Judge held that the plaintiff being a purchaser *pendente lite* was bound by the result of the defendant's suit against her father-in-law. He, therefore, rejected the plaintiff's claim. The District Judge took a different view. He maintained that, at the date of the defendant's suit, the title to the house had certainly not vested in the plaintiff, who was a purchaser for valuable consideration without notice of the defendant's claims. He, therefore, made a decree in favour of the plaintiff.

The defendant appealed to the High Court.

*Ganesh Ramchandra Kirloskar* for the appellant.—The Judge erred in holding that the doctrine of *lis pendens* did not apply : *Balaji Ganesh v. Khushalji*(1) ; *Gulabchand Manekchand v. Dhondi valad Bhau*(2) ; *Ravji Narayan v. Krishnaji Lakshman*(3).

(1) 11 Bom. H. C. Rep. 24.

(2) 11 Bom. H. C. Rep. 64.

(3) 11 Bom. H. C. Rep. 139.

*Daji Abaji Khare* for the respondent.—The plaintiff's sale is an execution sale. It is an operation of the law, and not a voluntary act of the parties: *Anundoo Moyee Dosee v. Dhonendro Chunder Mookerjee*(1). The principle of *lis pendens* does not apply in the case of an execution sale. In this case the attachment had been placed by the plaintiff *before* the institution of the plaintiff's suit. The decree of the District Judge is, therefore, correct.

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The judgment of the Court was delivered by

PINHEY, J.—On the 12th October, 1876, Parvati filed a suit against her husband's father, Ramapa, alleging that her husband, Ballapa, had died fifteen years previously; that ever since his death she had lived with her husband's father, Ramapa, until lately when he had deserted her and left her in the house described in her plaint (the house in dispute in the present case); and praying that a decree might be passed against Ramapa awarding her maintenance and allowance for clothing at a certain rate, and declaring that she (Parvati) was entitled to occupy for her lifetime the house in the plaint described.

On the 20th June, 1877, a decree was passed in this suit in favour of the plaintiff in the terms of the prayer of her plaint (excepting as to the allowance claimed for clothing).

On the 29th June, 1876, Kisansing had obtained by consent a money decree for Rs. 40 against Ramapa, and on the 24th July, 1876, he had attached the house in dispute in execution of his decree; but the house was not sold till 10th November, 1876, (that is, after the date on which Parvati filed her suit against Ramapa). The house was bought by Kisansing himself, who obtained a certificate of the sale on the 21st December, 1876.

Kisansing has instituted the present suit to eject Parvati, and it is contended on his behalf (1) that the doctrine of *lis pendens* does not affect a sale made by the Court and not voluntarily by the parties; and (2) that Parvati's decree is not binding on him, because he had actually attached the house before Parvati's suit was instituted.

Now, as to the first of these contentions, it is sufficient to remark that what Kisansing bought was Ramapa's right, title, and interest

(1) 14 Moo. I. A. 101.

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in the house, and that right, title, and interest was certainly at that time liable to be declared subject to a limited interest in favour of Parvati whose suit was then pending. He bought no more than Ramapa had or could give. As Ramapa's title was subject to the decree in Parvati's suit, Kisansing purchased subject to the same.

Then, as to the attachment of Kisansing being prior to the institution of Parvati's suit, we are of opinion that this makes no difference. The attachment would have been unaffected by new rights created by Ramapa subsequent to the attachment; but Parvati's right was no newly created one; it existed before the attachment, and was, therefore, unaffected by it.

The District Judge has remarked that "debts take precedence of maintenance". We may assume that this is correct. But we do not say that Kisansing had no right to sell the house in execution of Ramapa's debt, and to take possession of it when Parvati's life estate falls in. We hold only that Kisansing cannot turn out Parvati during her life-time.

We reverse the decree of the District Court, and restore that of the Subordinate Court, and order Kisansing to bear all costs in the District Court and in this Court.

*Decree reversed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Melvill and Mr. Justice Nanabhai Haridas.*

March 30. | SHRINIVAS, APPLICANT, v. RADHABAI AND MANJAPA, OPONENTS.\*

*Civil Procedure Code Act X of 1877, Sections 294 and 295—Competing decree-holders  
—Purchase by permission of Court.*

Where there are competing decree-holders who have applied for execution of their decrees, section 294 of the Civil Procedure Code (Act X of 1877) must be taken as subject to the provisions of section 295, so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree.

\* Application under Extraordinary Jurisdiction, No. 124 of 1881.