

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

PAYA'PA', (ORIGINAL DEFENDANT), APPELLANT, v. PADMA'PA' AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1886.
July 13.

Limitation—Decree—Execution—Intervenor—Judgment-debtor's acts subsequent to sale of his property how far binding on the purchaser at Court sale—Practice.

On the 24th March, 1879, a certain property was attached in execution of a money decree against S, and was finally sold on the 22nd September, 1879, and purchased by the plaintiffs' father. Subsequently to the attachment, the defendant caused the same property to be attached in execution of his decree against R. On the 15th August, 1879, S. intervened, and claimed the property as his own, but his claim was disallowed, and the property was sold on the 4th August, 1880, and purchased by the defendant himself. On proceeding to take possession, the plaintiffs obstructed him, but the obstruction was disallowed on the 28th July, 1882, and they were dispossessed. The plaintiffs, therefore, brought a suit to recover possession. The Court of first instance rejected their claim, on the ground that the omission, on the part of S., to sue to set aside the summary order passed against him on the 15th August, 1879, barred the plaintiffs. The lower Appellate Court reversed that decree. On appeal by the defendant to the High Court,

Held, confirming the decree of the lower Appellate Court, that the plaintiffs' suit was not barred. The plaintiffs' father having purchased under the attachment dated 24th March, 1879, and having thus acquired, by his purchase, the interest of S. as it stood at that date, that interest could not be affected by any subsequent act or omission of the judgment-debtor S.

THIS was a second appeal from the decision of C. F. H. Shaw, District Judge of Belgaum.

At the instance of a judgment-creditor of one Sakhoji, the house in dispute was attached on the 24th March, 1879, and on the 22nd September, 1879, was put up to auction and purchased by the plaintiffs' deceased father. Subsequently to that attachment, the defendant caused the same house to be attached in execution of a decree obtained by him against one Rachapa. On the 15th August, 1879, Sakhoji intervened, and claimed it as his own, but his claim was disallowed, and it was ordered to be sold. The sale under this second attachment was held on the 4th August, 1880, and the house was purchased by the defendant himself. Sakhoji took no further proceedings. The defendant applied to be put into possession, and the Court made an

* Second Appeal, No. 408 of 1884.

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order in his favour. The plaintiffs, who were then in possession, obstructed, but their obstruction was set aside on the 28th July, 1882.

The plaintiffs brought the present suit to recover possession of the property.

The defendant contended (*inter alia*) that the omission, on the part of Sakhoji, to bring a suit within one year from the date of the summary order passed against him on the 15th August, 1879, barred the plaintiffs' suit.

The Subordinate Judge of Belgaum rejected the plaintiffs' claim. The plaintiffs appealed, and the lower Appellate Court reversed the decree of the Court of first instance.

The defendant preferred a second appeal to the High Court.

Ganesh Rámchandra Kírloskar for the appellant:—The decision against Sakhoji, not being set aside by him within one year, concluded the respondents. A Court purchaser buys only the right, title, and interest of the judgment-debtor as it exists at the date of his purchase.

Mánekshá Jehángirshá for the respondents:—The attachment in execution of the decree against Sakhoji was prior to that by the defendant, and before Sakhoji had intervened. The execution-creditor is not bound by subsequent acts of the judgment-debtor. The first attachment attached what belonged to the debtor at that time. An attachment binds the property attached: see *Gamble v. Bholágir* ⁽¹⁾. The subsequent acts of the mortgagor do not bind the mortgagee, and the same rule may apply in the case of a judgment-debtor. The respondents were even in possession at the time they were ousted, having thus their title as purchasers at Court sale, perfected.

SARGENT, C. J.:—In this case the plaintiffs' father had purchased the property in question at an auction sale on the 22nd September, 1879, in execution of a decree against one Sakhoji. The defendant purchased the same property at an execution sale on the 4th August, 1880, under a decree against one Rachápá. On the occasion of the attachment by the defendant, Sakhoji intervened on

(1) 2 Bom. H. C. Rep., 147.

the 15th August, 1879; claiming the property to belong to him, and not to Rachápá; and the decision in the summary proceeding being adverse to him, he omitted to bring a suit within a year. It has been contended for the defendant that, under these circumstances, the plaintiff cannot now be heard to dispute his title. But the plaintiffs' father purchased under an attachment, dated the 24th March, 1879, and thus acquired, by his purchase, Sakhoji's interest at that date, which could not be affected by any subsequent act or omission of the judgment-debtor, Sakhoji. The decree must, therefore, be confirmed with costs.

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Decree confirmed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

RAKHMA'BA'I, (ORIGINAL DEFENDANT), APPELLANT, v. TUKA'RAM AND ANOTHER, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1886.
July 26.

Hindu law—Inheritance—Step-mother preferable to widow of half-brother—Evidence Act I of 1872, Sec. 92, Proviso 4—Oral agreement to rescind registered document.

As between the widows of specified heirs who are *gotrajá sapindás*, the step-mother, being the widow of the father who is higher on the list than the half-brother, is preferable to the widow of the half-brother.

Where the defendant claimed the property as a preferential heir, and also set up an alternative defence of an alleged oral agreement cancelling a registered deed of sale of property by her co-widow to the plaintiffs, the lower Court was of opinion that proviso 4 of section 92 of the Evidence Act I of 1872 was a bar to any inquiry into the merits of this defence.

Held, that the lower Court was wrong. The object of the oral agreement was not to rescind the original transaction, but to transfer any rights, acquired by the plaintiffs, to the defendant, and was an entirely new transaction.

THIS was a second appeal from the decision of S. Tagore, Judge of the district of Sholápur-Bijápur at Sholápur.

One Yashvantráy died, having had two wives, Rakhmábái and Saguná. At his death he left him surviving his widow Rakhmábái, his son Shripatráy (the child of Saguná) and Sugandhá-

*Second Appeal, No. 421 of 1884.