

## APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice,  
and Mr. Justice Russell.

SHIVLINGAPPA BIN BASAPPA (ORIGINAL PLAINTIFF), APPELLANT, v.  
CHANBASAPPA BIN FAKIRAPPA AND ANOTHER (ORIGINAL DEFEND-  
ANTS), RESPONDENTS.\*

1905.  
December 1.

*Civil Procedure Code (Act XIV of 1882), secs. 276 and 305—Execution of  
• decree—Attachment—Private sale pending attachment—Suit by vendee for  
recovery of possession.*

A judgment-debtor having executed a sale-deed of his house pending attachment in execution of a decree and the vendee having subsequently brought a suit to recover possession of the house, the lower Court dismissed the suit holding that section 305 of the Civil Procedure Code (Act XIV of 1882) furnished an answer to the suit.

*Held*, reversing the decree, that the sale was a private alienation and it operated to convey to the plaintiff the interest of the vendor in the property the deed purported to pass. But to prevent frauds on decree-holders, it is provided by section 276 of the Civil Procedure Code (Act XIV of 1882) that "when an attachment has been made by actual seizure or by written order duly intimated and made known in the manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise.....during the continuance of the attachment, shall be void as against all claims enforceable under the attachment." The sale, if made during the continuance of the attachment, would be void to the extent indicated in the section.

Section 305 of the Civil Procedure Code (Act XIV of 1882) is an enabling section and qualifies the prohibition contained in section 276; on compliance with the conditions of that section a private alienation, notwithstanding section 276, becomes absolute even against all claims enforceable under the attachment.

If it did not become absolute under section 305, then it would not be operative against claims enforceable under the attachment, but to that extent would be defeasible.

SECOND appeal from the decision of L. Crump, District Judge of Dharwar, confirming the decree of V. G. Kaduskar, Joint Subordinate Judge.

The plaintiff sued to recover possession of the house in suit, alleging that it was the property of one Ulwappa, the deceased brother of defendant 1; that defendant 2 obtained a money

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decree against defendant 1 for a debt due by his deceased brother and got the house attached in execution of the decree, but that before the Court sale, defendant 1 sold the house to him for Rs. 200 under a registered sale-deed dated the 2nd April 1900; that defendant 2 wrongfully trespassed on a portion of the house, and that both the defendants having refused to deliver possession he brought the present suit.

Defendant 1 denied execution of the sale-deed relied on by the plaintiff, and contended that it was false and without consideration.

Defendant 2 answered that he did not trespass on any portion of the house; that he purchased the house from defendant 1 for Rs. 500 under a sale-deed dated the 5th June 1901, and that he had no knowledge of the sale to the plaintiff.

The Subordinate Judge found that the plaintiff's sale-deed was not proved. He, therefore, dismissed the suit.

On appeal by the plaintiff the Judge confirmed the decree on the following grounds:—

An objection was raised by the respondent's pleader at the hearing of this case which must, I think, prevail. It will be seen that the plaintiff's suit is based on a sale-deed alleged to have been executed by defendant 1 with the sanction of the Court under section 305 of the Civil Procedure Code. The last paragraph of this section runs as follows:

"Provided that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court."

Admittedly the sale-deed was never produced before the Court and no application was made praying for its confirmation. In the ordinary course of practice such documents are produced and the Court's sanction is endorsed upon them; as the sale is not absolute the title cannot be held to have passed, and the alleged vendee cannot maintain this suit against the vendor. The words of the section are imperative and the confirmation of the Court has obviously been made compulsory by the Legislature for the protection of the judgment-debtor. The proper course for the plaintiff was to apply to the Court, in the first instance, for the confirmation of the sale; without having done so he can have obtained no title which can enable him to maintain a suit on the sale-deed. In a case of this nature where the same questions may have to be decided in another proceeding, I think it would be unwise to enter into any discussion on the merits.

On these grounds I confirm the decree and dismiss the appeal with costs.

The plaintiff preferred a second appeal.

*Sumitra A. Hattiangdi* appeared for the appellant (plaintiff):—  
The Judge was wrong in holding that no title passed to us at all

under the sale-deed, as the sale was not confirmed by the Court under section 305 of the Civil Procedure Code. The sale cannot be void as against the whole world. It would be void only against "all claims enforceable under the attachment," section 276 of the Civil Procedure Code. In the present case there was no such claim in opposition to our purchase pending attachment. The judgment-creditor claimed under an independent subsequent sale from the judgment-debtor. It was therefore wrong to hold that the sale to us passed no title: *Amund Loll Doss v. Jullodhur Shaw* (1).

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*S. V. Bhandarkar* appeared for respondent 1 (defendant 1):—The sale being not confirmed under the last proviso to section 305 of the Civil Procedure Code, it could not pass any title to the plaintiff. Until the sale is confirmed by the Court, the vendee's title is only inchoate and not complete: sections 314 and 316 of the Civil Procedure Code.

*H. C. Coyaji* appeared for respondent 2 (defendant 2).

JENKINS, C. J.:—The plaintiff sues to obtain possession of a house, alleging a sale-deed executed in his favour by defendant No. 1.

The first Court held the sale-deed not proved.

The lower appellate Court did not go into that question, but considered that section 305 of the Civil Procedure Code furnished an answer to the suit.

From that decision the present appeal is preferred.

As the lower appellate Court came to no finding on the issue whether or not the plaintiff's sale-deed was proved, we must deal with this appeal as though the sale-deed had been proved.

*Prima facie*, a sale-deed executed by one person in favour of another operates to convey to that other the interest of the executant in the property the deed purports to pass. But to prevent frauds on decree-holders it is provided by section 276 of the Civil Procedure Code that "when an attachment has been made by actual seizure or by written order duly intimated and made known in the manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, . . . during the continuance of the attachment, shall be void as against all claims enforceable under the attachment."

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The alleged sale-deed on which the plaintiff relies would be a private alienation, and, if made during the continuance of an attachment, it would be void to the extent indicated in the section.

But the view that the plaintiff's title is defective has been based in the judgment of the lower Court and in the argument before us not on section 276, but on section 305 of the Civil Procedure Code.

Assuming, for the sake of argument, that section 305 applies, has it the effect which has been ascribed to it? We think not.

It is an enabling section, and qualifies the prohibition contained in section 276; on compliance with the conditions of that section a private alienation, notwithstanding section 276, becomes absolute even against all claims enforceable under the attachment.

If it did not become absolute under section 305, then it would not be operative against claims enforceable under the attachment, but to that extent would be defeasible.

That appears to us to be the scheme and effect of the Code, and we hold that the learned Judge has fallen into an error in supposing, on the assumptions that he has made, that section 305 furnishes an answer to the plaintiff's claim.

We must send back the case for the determination of the issues and for a re-trial in the light of these remarks; and for that purpose we must reverse this decree and direct that the costs shall be costs in the suit.

*Decree reversed and case remanded.*

G. B. R.

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