
(1952) 10 MAD CK 0008
In the Madras High Court
Case No : A.A.O. No. 121 of 1948

Arankandath Sankaran Nair and Another	APPELLANT
Vs	
A. Doraiswamy Chettiar and Others	RESPONDENT

Date of Decision : 07-10-1952

Acts Referred:

Central Excise Rules, 1944 — Rule 174, 60
Civil Procedure Code, 1908 (CPC) — Section 60

Citation : AIR 1953 Mad 478 : (1953) 1 MLJ 27

Hon'ble Judges : Subba Rao, J; Ramaswami, J

Bench : Division Bench

Advocate : D.A. Krishna Variar, for the Appellant; T.R. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—The only question in this appeal is whether the splints and veneers can be attached under Order 38, Rule 5, Civil P. C. The facts are simple and may be briefly narrated. The respondent instituted"" O. S. No. 3 of 1945 on the file of the Court of the Subordinate Judge of Ottapalam for possession of match factory and for mesne profits. After obtaining a decree therein, he took possession of the factory and applied for ascertainment of mesne profits. He also applied for attachment before judgment of splints and veneers owned by defendant 1. It was contended, "inter alia" that the said articles were not liable to attachment on the ground that defendant 1 had no disposing power over the said articles. The learned Subordinate Judge rejected the contention and directed the attachment of the said articles. The defendants have preferred the above appeal.

2. Mr. Variar the learned counsel for the appellants raised before us the point which his clients had unsuccessfully raised in the Court below. It is

contended that the licence, custody and sale of the articles are regulated by the rules framed under the Central Excise and Salt Act and that under

the said rules they cannot be sold except with the previous consent of the Excise Officer. So it is argued that defendant 1 has no disposing power

over the articles and therefore the articles are not liable to be attached.

3. The relevant provisions of the CPC and the rules made under the Central Excise and Salt Act may now be read. Section 60(1), Civil P. C. runs

thus:

The following property is liable to attachment and sale in execution of a decree, namely..... goods,all other saleable property, moveable or

immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own

benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf.

Under Rule 174 of the Central Excise Rules

every manufacturer, trader, dealer, or person hereinafter mentioned, shall be required to take out a licence.....and shall not conduct his business in

regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer in

the proper form.....

Rule 60 runs thus:

Where the splints and veneers are obtained from a licenced manufacturer or importer of such goods, an indent shall be prepared in duplicate and

counter-signed by the officer at the factory. The supplier shall return one copy to the officer with an endorsement stating the quantity actually

supplied. Each consignment shall be produced before the officer at the factory and if the quantity received differs from the quantity stated in the

supplier's endorsement, the supplier shall be required to explain the discrepancy.

It will be seen from the aforesaid provisions that the licensee is the owner of the articles. In the interests of public, their custody, sale and purchase

are regulated under the rules framed by the Government under the Central Excise and Salt Act. We have searched in vain to find any provision

either in the Act or the rules framed thereunder prohibiting the sale of the said articles. The rules only regulate the mode of sale. If so, it follows that

the licensee has a disposing power within the meaning of Section 60, Civil P. C.

4. But the learned counsel for the appellants relied upon certain decisions in support of his contention. Radha Krishna Beni Prasad Vs. Kishore

Chand, Shiva Charan Lal and Others, is a case arising under the Electricity Act. Under that Act, in case a licence had been revoked certain

provisions laid down by Section 5 of the Act had an imperative effect, and under those provisions the licensee had the power of disposing of all

lands, buildings, works, materials and plant belonging to the undertaking in any manner which he might think fit only if Clause (f) of the section

applied to the case. On a construction of the provisions of the Act, the learned Judges held that the defendant in that case had a disposing power

only under the provisions of Clause (f) of Section 5 and as the contingency contemplated by that clause had not arisen, he had no disposing power

and therefore the undertaking was not liable to be attached. As the defendant had no disposing power, the learned Judges rightly held that the

undertaking was not liable to be attached. In -- Ram Dass and Another Vs. Bhagwat Narain Singh and Others, , Rowland J. has held that Section

12A, Encumbered Estates Act read with Section 60, Civil P. C. prevents a property released u/s 12 from being sold in execution of a money

decree obtained against the holder of such property without the sanction of the Commissioner. On a construction of the relevant provisions the

learned Judge pointed out that under the Act a proprietor had no right to sell the property extending beyond his lifetime, except with the consent of

the Commissioner. Having regard to the object and express provisions of the Act, the learned Judge held that the proprietor had no disposing

power. A Bench of the same Court consisting of Macpherson and Dhavle JJ. accepted the correctness of the aforesaid judgment in -- Khitnarain

Sahi and Others Vs. Surju Seth and Others, and also observed:

The object of the Act of 1876 is to provide for the relief of "holders" of land in Chota Nagpur who may be in debt and whose Immovable

property may be subject to mortgages, charges and liens, and the method adopted is to vest the management of the property of a holder in an

officer appointed by the Commissioner and termed the manager whose function

is to clear off the encumbrances after which the property is released to the holder. For reasons of public policy the property is to be saved to the holder.

In view of the object underlying the Act and the provisions thereof, the learned Judges found that the holder had no disposing power over the property and therefore it was not liable to be attached. They have succinctly stated the proposition thus:

The measure of liability to involuntary alienation is the power of voluntary transfer.

The aforesaid judgments only recognised and applied the incontestable proposition that a property of a judgment-debtor is not liable to be attached if he has no disposing power over the same. Whether a judgment-debtor has a disposing power in respect of a particular property is a question to be decided in each case.

5. A judgment of the Bombay High Court in -- "Purshottam v. Balvant", 10 Bom L R 13 (D) is apposite and may be usefully referred to. The

judgment-creditor in that case attached three casks of country liquor which were in the judgment-debtor's shop. The Collector intervened and

objected to the attachment on the ground that the liquor could not be removed without a transport or permit and could not be sold without a permit

under the Abkari Act & therefore not liable to be attached. Heaton J. in dealing with the aforesaid argument made the following pertinent remarks:

Nothing has been pointed out to us in the law from which we can infer that country liquor is exempt from attachment and sale in execution. The

liquor had admittedly been purchased and paid for by the judgment-debtor; it was his property. There was no doubt it could be sold by him though

he had to deal with it in accordance with the terms of his licence and the provisions of the Abkari Act. It is, therefore, clear that it is saleable

property, and is covered by the provisions of the first part of Section 60, Civil P. C.

We respectfully agree with the aforesaid observations.

6. In the present case the splints and veneers are the property of defendant 1. Though under the Central Excise Rules he could only deal with them

in the manner prescribed, the rules prescribed do not affect his saleable interest in the property. There is no clause just like in the Electricity Act or

Chota Nagpur Encumbered Estates Act laying down a condition precedent for the exercise of his right to sell. As defendant 1 has a saleable interest in the property, it is clearly liable to be attached.

7. Mr. Variar then contended that on the date when the property was attached the term of defendant 1's licence had expired and therefore on the date of the attachment he had no saleable interest in the property. This argument was not raised in the Court below. Indeed the judgment discloses that both parties proceeded on the basis that the licence was subsisting on the date when the property was attached. In the circumstances, we do not think we are justified in allowing the appellants to raise this question of fact for the first time before us.

8. For the aforesaid reasons, we agree with the conclusion of the Court below and dismiss this appeal with costs.