

(1964) 01 GUJ CK 0001
In the Gujarat High Court

Bai Kailas Gouri

APPELLANT

Vs

Patel Shanabhai Nathabhai and Others

RESPONDENT

Date of Decision : 10-01-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, Order 21 Rule 54

Citation : (1965) 6 GLR 328

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—An application of the judgment-debtor objecting to the sale of certain property was dismissed by the Joint Civil Judge Senior Division Baroda as not maintainable on the ground that the application is made long after the property was attached. In appeal it is urged that this order of the lower Court is wrong and that the judgment-debtor raised the objection to the attachment of the property within two months of her coming to know of the attachment when a notice under Order 21 Rule 66 C.P. Code was served on the appellant. This notice was served on 11 and the application was given in March 1961. But according to the Learned Counsel for respondent No. 1 the attachment was made on 11 It is also conceded by him that an order prohibiting the judgment-debtor from transferring the property as provided in Order 21 Rule 54 C.P. Code was not served on the judgment-debtor. But he relied on Karan Singh Vs. Ram Sahai and Another, and says that it is not necessary to inform the judgment-debtor of the order passed under Order 21 Rule 54 C.P. Code. Order 21 Rule 54 C.P. Code reads as follows:

(1) Where the property is Immovable the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order shall be affixed on a conspicuous part of the court-house and also where the property is

land paying revenue to the Government in the office of the Collector of the district in which the land is situate.

2. The first Sub-rule deals with the judgment-debtor. The second sub-rule deals with informing the general public because on the attachment not only the judgment-debtor is prohibited from transferring or charging the property but also all persons are prohibited from taking any benefit from such transfer or charge. It is therefore necessary for the judgment-debtor and also for the public to know of the order of attachment if passed. The second para of Order 21 Rule 54 C.P. Code deals with the mode of informing the public in general. But the first para requires the judgmentdebtor to be prohibited. The judgment-debtor cannot be prohibited unless he is informed of the order of the prohibition. The argument that the judgment-debtor is prohibited on the mere fact that the order is passed in the Court cannot be appreciated because if a person is to be prohibited from doing a certain thing he must be informed of the prohibition In the Allahabad case the view taken is that the prohibitory order need not be served on the judgment-debtor because there is no provision for service of notice. It is true that the words "notice and "service are not found in the first paragraph of Order 21 Rule 54 C.P. Code. But the expression "the judgment-debtor shall be prohibited implies that the judgment-debtor should be informed of the prohibition. A person cannot be prohibited unless he is informed of the prohibition. With great respect I differ from the view taken by the Allahabad High Court and hold that as the judgment-debtor was not informed if the prohibitory order there has been no attachment The decree-holder should attach the property in the regular manner and until then the property should not be sold The proceedings for the sale of the property are therefore set aside. The appeal is allowed with costs.