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(1968) 02 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 222 of 1963

Bhagwan Das Pribhdas and Others — APPELLANT

Vs

Santokh Singh Saran Singh — RESPONDENT

Date of Decision : 27-02-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 5, Order 21 Rule 54, Order 38 Rule 5, 136

Citation : AIR 1968 P&H 461

Hon'ble Judges : Mehar Singh, C.J;R.S. Narula, J

Bench : Division Bench

Advocate : H.L. Sarin, B.S. Malik and Harnam Singh Awasthy, for the Appellant; B.R. Tuli, for the Respondent

Final Decision : Allowed

Judgement

Mehar Singh, C.J.—A suit for recovery of certain amount of money having been instituted by the decree-holders, Bhagwan Das and others, against the judgment-debtors, Santokh Singh and others, in the Court of a Civil Judge at Nasik (Maharashtra), the learned trial Judge sent a warrant of attachment of the house of the judgment-debtors to attach the same before judgment. The warrant was addressed to the Bailiff in the Civil Courts at Ludhiana. It is dated February 6, 1956. There is on it then the order of the Senior Subordinate Judge of Ludhiana, made on February 18, 1956, directing the Civil Nazir to comply with it. The warrant of attachment was executed and attach ment before judgment of the house of the judgment-debtors was carried out on February 27 1956.

2. On February 12, 1957, the decree holders obtained a decree for Rs. 81,626/2/6, with proportionate costs, against the iudgment-debtors. The decree-holders obtained a transfer certificate for execution of the decree in the Civil Court at Ludhiana and actually made the execution application at Ludhiana on April 19, 1960. On that the Judgment-debtors made an objection application to the Court executing the decree that the house had in fact not been attached

according to law and that, in any case, even if it was duly attached according to law-it being their only residential house, it was exempt from attachment and sale in execution of the money decree against them in view of proviso (ccc) to Section 60(1) of the Code of Civil Procedure, as inserted by Punjab Relief of Indebtedness Act, 1934 (Punjab Act 7 of 1934) (as amended by Punjab Acts 12 of 1940. 6 of 1942 and 44 of 1960).

3. The executing Court settled a number of issues in the objection application of the judgment-debtors and ultimately finding in their favour released the house from attachment. It found that the attachment was invalid and without jurisdiction and also that the house was exempt from attachment and sale in execution of the decree-holders'' decree as claimed by the judgment-debtors. Against the order of the executing Court there was an appeal to this Court and a learned Single Judge in his judgment and order of May 15, 1963. has held, on the matters that alone were the subject-matter of controversy before him, (a) that the attach ment before judgment in this case was not without jurisdiction though it was attended by an irregularity inasmuch as contrary to Sub-section (1) of Section 136 of the CPC an order of attachment by the Nasik Court was not sent to the District Court of Ludhiana but to a Bailiff at Ludhiana, and it was not an invalid and illegal attachment, and (b) that for the matter of an objection application to claim exemption from attachment and sale of property in execution of a money decree, where there has already been an attachment before judgment of a property of the judgment-debtor, such attachment for the purposes of such execution dates from the date of the execution application and not from the original date of attachment before judgment. In this approach the learned Judge accepted the appeal of the decree-holders and remanded the case to the trial Court tor a fresh decision after giving opportunity to the parties to lead evidence on the question whether the property in dispute was or was not exempt from attachment and sale as claimed by the judgment-debtors. One appeal (L. P. A. No. 222 of 1963) has been filed against the judgment and order of the learned Single Judge by the decree-holders, and another appeal (L. P. A. No. 259 of 1963) has been filed by the judgment-debtors.

4. The appeal of the decree-holders is confined to this that for the matter of the decision of the objection application of the judgment-debtors u/s 60(1), proviso (ccc), of the Code of Civil Procedure, the date of attachment to be taken in this case is the date of the attachment before judgment on February 27, 1956, and not the subsequent date of making the execution application on April 19, 1960, after obtaining the decree by the decree-holders. The appeal is obviously without substance because apparently attachment before judgment cannot be an attachment in execution of a decree which does not exist. It can only become an attachment in execution of a decree after that decree has been passed and after an application to execute such a decree has been made. It is true that where an attachment before judgment has been made, no fresh attachment may be made of the same property after the passing of the decree and the same attachment may become an attachment for the purposes of the execution ot the decree

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immediately on the date of the application to execute it. But by no stretch of any reasoning can attachment of the property be treated as an attachment in execution of a decree on a date on which the decree was not in existence. In this respect the approach of the learned Single Judge is not open to any argument whatsoever. So the appeal of the decree-holders is dismissed with costs.

5. In so far as the appeal ol the judgment-debtors is concerned, there is a certain conflict of decisions referred to in the judgment of the learned Single Judge and more or less the same cases have been referred to during the arguments by the learned counsel for the parties. In Bhagwan Singh v. Barkat Ram AIR 1943 Lah 129, a Division Bench of the Lahore High Court consisting of Tek Chand and Beckett JJ., which decision has been followed by a Full Bench of the Travancore-Cochin High Court, reported as Mariamma Mathew v. Ittop Poulo AIR 1952 Trav Co. 159 (FB), held that a question as to whether certain proceedings are void for want of jurisdiction when objection is raised at a late stage depends on whether it is a case of inherent lack of jurisdiction, or of the irregular exercise of it. If the former, the proceedings are coram non judice and must be set aside even though the objection had been raised after the lapse of some years. If the latter, the objection must be taken to have been waived and cannot be entertained at that stage. In Bhagwan Singh''s case AIR 1943 Lah 129 the certificate for execution of the decree was not sent to the District Judge of the District Court, but to a certain Judge in the same district. The judgment-debtor raised objections to the execution a number of times but did nut object to the sending of the certificate for execution of the decree to a wrong Court contrary to subsection (1) of Section 136 of the CPC until be came to do so after a period of something like six years. The learned Judges held that in the circumstances the objection taken by the judgment-debtor must be taken to have been waived. In Mariamma Mathew''s case AIR 1952 Tra Co.159 -FB), also an order of attachment before judgment relating to property situate within the jurisdiction of another Court was transmitted to that Court direct and not through the District Court, and the learned Judges were of the opinion that this was merely a procedural irregularity and did not affect the jurisdiction of the Court executing the order of attachment. In both the cases the learned Judges pointed out that the Court which actually carried out the order was the Court which would have been entrusted with the carrying out of the same by the District Court concerned if the process had properly been forwarded to the District Court. In Haji Rahim Bux and Sons and Others Vs. Firm Samiullah and Sons, , a Division Bench of the Allahabad High Court has not followed those two cases and has taken the contrary view pointing out that in such a case it is the District Court which has jurisdiction to cause the attachment to be made by its own officers or by a Court subordinate to itself. In the absence of a direction by the District Court to that etfect, any attachment, which may be made by a subordinate Court in pursuance of a precept received from a Court in another district would be without jurisdiction and consequently void. Same view had been taken by a Division Bench of the Calcutta High Court in Sachindra Kumar Bose v. Raj Kumari

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Usha Prova De, AIR 1949 Cal 690. In all these four cases, however, though the order for attachment was not addressed to the District Court within the local limits of whose jurisdiction the property was situate by the outside Court contrary to Sub-section (1) of Section 136, or the order of transfer was not sent to the District Court direct according to Rule 5 of Order 21 of the Code of Civil Procedure, in one set of cases it was treated as a mere irregularity, objection to which can be taken to have been waived by lapse of time; in the other set of cases it was treated as a matter going to the jurisdiction in rendering the order void. In the present case it is not necessary to reconcile such difference of opinion because in this case the order for attachment of the property of the judgment-debtors before judgment was addressed to no Court. It was addressed to the Bailiff at Ludhiana. It makes no difference that somehow, which has not been explained, the order was placed before the Senior Subordinate Judge who then directed the Civil Mazir to comply with it. The fact, however, remains that it was an order addressed by the Nasik Court to no Court in Ludhiana District but to a Bailiff. Patently such a warrant for attachment before judgment of the property of the judgment-debtors addressed to the Bailiff in another District was an order without jurisdiction and was thus null and void. Nothing done in pursuance of it can have any legal basis. Even if it can be assumed that the Bailiff produced the order of attachment before the Senior Subordinate Judge who then directed the Civil Nazir to eomply with it, that will not make the order within jurisdiction. An order of attachment before judgment from a Court outside anyhow conveyed to a Court in another district cannot be taken to be an order made within jurisdiction, or an order of which compliance can be taken to have been made within the ambit of law in the district in which it is received by a person other than a Court. There is only one similar case that has been cited on the side of the judgment-debtors. It is Rameshwardayal Ramswaroop v. Bheemsen Dulichand, AIR 1951 MP 82, in which the Court issuing an order for attachment of property in the jurisdiction of another district addressed the process in the name of the Nazir of the Court of the City Civil Judge of that District. Shinde J., held that the Court issuing the order acted illegally in doing so, and quashed the proceedings resulting therefrom, pointing out that the procedure adopted by the Court was contrary to the provisions of Section 136 of the Code of Civil Procedure.

6. In this view, the appeal of the judgment-debtors is accepted and their objection is maintained that there was no attachment before judgment of their house in dispute according to law and even on the date of the execution application by the decree-holders no such attachment of their house in question was subsisting. The decree-holders will bear the costs of the judgment-debtors in this appeal.

R. S. Narula, J.

7. I agree.

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