
(1975) 04 PAT CK 0011
In the Patna High Court
Case No : Civil Revision No. 154 of 1974

Dr. Khan Mohammad Halim	Vs	APPELLANT
Commissioners of Hazaribagh Municipality and Another		RESPONDENT

Date of Decision : 14-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 115

Citation : AIR 1976 Patna 88

Hon'ble Judges : H.L. Agarwal, J

Bench : Single Bench

Advocate : K.D. De, for the Appellant; Parmeshwar Prasad Sinha and Hare Krishna Kumar, for the Respondent

Judgement

H.L. Agarwal, J.—This is an application in revision by the claimant to a house property which has been sold in execution of a decree in favour of opposite party No. 1, the Commissioners of the Hazaribagh Municipality, against one Mt. Saira Khatoon, the owner of the property in question, namely, Municipal Holding No 296 in Ward No. IV of the Hazaribagh Municipality.

2. The relevant facts are these. By a registered deed of sale, dated the 13th of December, 1960, the recorded owner of the holding in question sold to the petitioner. The Municipality obtained a Small Cause Court decree for Rs. 743.72 on the 22nd of July, 1963, for arrears of Municipal taxes and on having applied for transferring it on the original cavil side put the same in execution in Case No. 4 of 1966 and proceeded against the holding in question.

3. The holding was put to auction sale on the 8th of November, 1968, and was purchased by opposite party No. 2 Mt. Adla Khatoon, for Rs. 1,125/-. Twenty-nine days thereafter, on the 7th of December, 1968, the petitioner preferred his claim under the provisions of Order 21. Rule 58 of the Civil Procedure Code. An objection was raised on behalf of the decree-holder that the claim case having been filed after the sale having already taken place was not maintainable.

4. The learned Subordinate Judge accepted the objection and dismissed the claim case on this account only. The claimant has now moved this Court.

5. Mr. K.D. De, appearing on behalf "of the petitioner, has seriously challenged the order of the learned Subordinate Judge and has contended that according to the Patna Amendment of Rule 58 of Order 21, of the Civil Procedure Code, the claim of the petitioner was quite competent and could not be thrown away on the ground that it was filed after the sale had taken place. As the question raised is of some importance and common occurrence, I propose to consider it in rather a detailed way.

6. Rule 58 of the Central Rules reads as follows:--

"Where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection....."

The Patna High Court, however, has substituted its own rule which became effective from 1-1-1938. The relevant provision of the substituted rule reads as follows:--

"When any claim is preferred to any property, the subject-matter of execution proceedings, or any objection is made to the attachment thereof, on the ground that the applicant has an interest therein which is not bound under the decree, or that such property is not liable to attachment, the Court shall proceed to investigate the claim or objection....."

7. It has now to be seen as to whether, by virtue of the substituted rule of this Court, the scope of investigation contemplated by the original Central rules is in any way enlarged. A Bench of this Court in the case of Puhupdej Kuer v. Ram Charitar Barhi. AIR 1924 Pat 761 while considering the provisions of Rule 58 of the Central Rules has held that, after the sale is held, the attachment is ipso facto determined and the Court has no longer any jurisdiction to try the claim case under Rule 58. This decision was referred to with approval by another Bench of this Court in the case of Janki Mohan and Another Vs. Dr. S. Samaddar and Others, and the principle that an executing court has no jurisdiction to entertain and decide the claim on an application for releasing the property from attachment under Order 21, Rule 58 after the sale has taken place was reiterated.

8. When this question came up for consideration again before a learned single Judge of this Court he referred it to a larger Bench. Accordingly, another Division Bench of this Court in the case of A.P. Sinha v. R.P. Sinha. 1967 BLJR 381 considered the two earlier Bench decisions referred to above, namely Mt. Puhupdei Kuar Vs. Ramcharitar Barhi and Others, and Janki Mohan and Another Vs. Dr. S. Samaddar and Others, and dissented to follow them on the ground that those decisions were per incuriam in as much as they had not taken notice of the substituted Rule 58. In the last mentioned case, however, the fact was

that the application for release of the property was actually made before the sale had taken place and the prayer of the claimants to stay the sale during the disposal of their claim case was refused and the sale was ordered to be held with a direction that confirmation would not take place until the claim cases were disposed of. But when the cases were taken up after the sale, a preliminary objection was taken by the decree-holder that, as the sale had already been held, the claim cases were not maintainable. The executing Court had upheld those objections which fell for consideration in the aforesaid decision and it was held that the claim or objection might be heard even after the sale had been held. To the same effect is another decision of this Court in the case of Ravindra Nath Mahta v. Ram Bahadur Thakur and Co. 1967 BLJR 939 .

The learned Judges, however, declined to decide the question as to when the claim or objection itself was filed after the sale had been already held, whether the Executing Court had jurisdiction to decide the claim or objection and left the "same open for decision on a future occasion." I am informed at the Bar that this question has not so far come up for decision of this Court, In the case of Kamesar Singh and Another Vs. Hanuman Prasad and Others, also this question has not been decided.

9. I have quoted the Central Rule 58 as well as that substituted by this Court. On a careful consideration of both the rules, to me, it appears that the scope of enquiry contemplated by the Patna rule is much wider in its ambit. In the Central rule, the only objection or claim which is contemplated to be preferred is to the attachment of a property and the only investigation that the court is called upon such a claim to make is, with respect to the liability of the property in question to the attachment. According to the Patna rule, apart from the claim or objection to the attachment of the property as such a wider enquiry seems to be contemplated to be made "if a claim is preferred to any property which is the subject matter of the execution proceedings." The first part of Rule 58 as amended by this Court, therefore, is not limited to the enquiry or claim with respect to the liability of the property to an attachment in the execution proceeding alone but contemplates a claim of a general nature which can be preferred to any property which happens to be the subject matter of the execution proceeding, irrespective of the stage of the execution proceeding. The only condition that seems to me to be required for making a claim under this rule is that the properties must be the subject matter of the execution proceeding. Naturally, it follows that the execution proceeding must be pending at the time the claim or objection is preferred, otherwise if the execution proceeding comes to an end the property would cease to be the subject matter of any execution proceeding. It cannot be disputed that the execution proceeding remains pending even after the sale of the property in course of its proceedings. In my opinion, therefore, there is no bar for a claim to be preferred to any property according to the substituted Rule 58, which is the subject-matter of the execution proceeding even after the sale had taken place. According to the specially substituted rule of this Court, the Executing Court is bound to proceed to investigate the claim.

According to the proviso to Sub-rule (1) of Rule 58, it is always open to the Court to refuse to investigate the claim if it comes to a conclusion that the claim or objection was designedly or unnecessarily delayed. The proviso, therefore, prescribes a proper check in cases where the Court considers that the claim or objection was designedly or unnecessarily delayed. Therefore, by enlarging the period for making the claim, some amount of diligence has been cast upon the claimant admittedly, in this case, the claim was not unnecessarily or designedly delayed.

10. Reference may, however, be made to the case of Gajadhar Choudhary Vs. Khodai Rahmat Khan and Another, where a learned single Judge of this Court with reference to the amended Rules 58, 59 and 60 of Order 21 of the Code of Civil Procedure, has observed that the modification in the said rules made it clear and consistent without any doubt that the object of the amendment was to bring within the scope of proceedings under Order 21, Rule 58 not merely the property attached in execution of a decree but also for all properties which were subject-matter of the execution proceedings.

11. The Executing Court has, therefore, committed an apparent error of jurisdiction in dismissing the claim case as not maintainable and refusing to enquire into the claim of the petitioner on taking an erroneous view of the correct legal provision and thereby failed to exercise the jurisdiction vested in it.

12. For the foregoing reasons, I would allow this application, set aside the order of the Court below and remit the case for its consideration and disposal in accordance with law. I shall, however, make no order as to costs.