

(1997) 11 MP CK 0005
In the Madhya Pradesh High Court
Case No : S. A. No. 137 of 1980 (1)

Firm Jadao chand Keshrimal	Vs	APPELLANT
Mishrilai (deceased) through LRs (Rajmal and another) and Another		RESPONDENT

Date of Decision : 03-11-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, 64

Citation : (1998) 2 MPJR 10

Hon'ble Judges : A.K. Mathur, C.J

Bench : Single Bench

Advocate : S.D. Sanghi, for the Appellant; S.N. Dagaonkar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C. J.

This is a second appeal by the defendant against the judgment of the learned District Judge Ujjain passed in Civil First Appeal No. 15-A of 1976 affirming the judgment and decree passed by the trial Court in Civil Suit No. 44-A of 1971.

Brief facts giving rise to this appeal are that a suit was filed by plaintiff Mishrilal against the defendant firm Jadao Chand Keshrimal and Mst. Jamnabai. It is alleged that Jamuna bai had a field bearing 538 situated at village Khedawa, Tahsil Khachrod, District Ujjain. It is alleged that a civil suit was filed before the Small Cause Court by the firm Jadaochand Keshrimal for recovery of certain amount and therein decree was passed by the Small Cause Court. It is alleged that this land was purchased by Mishrilal on 19.5.1962. An interim order of attachment was also obtained in the suit before the Small Cause Court by Jadao Chand Keshrimal (plaintiff therein) on 21.4.1962. A decree was passed in favour of Jadaochand Keshrimal and in execution of that, and objection was filed by Mishrilal who had purchased the land in question for a sum of Rs. 3500.00 from Jamnabai. That objection was over ruled. Therefore, Mishrilal filed the present

civil suit challenging the order of attachment passed by the Small Cause Court for declaration of valid title of the land in question. This suit was contested by Jadaochand Keshrimal. Jamnabai was a formal party in the suit. The question which is essential for disposal of this case was whether a valid attachment notice was issued in the case or not so as to invoke Section 64 of the C. P. C.

The learned trial court framed about 11 issues and the relevant issue is issue No. 4 which says whether in execution Case No. 635 of 1960 - Jadao Chand Keshrimal vs. Jamnabai, the attachment notice was a valid or not. This issue was decided in favour of the plaintiff and it was held that there was no valid attachment because the notice of that attachment was not displayed on the notice board of the office of Collectorate as per requirement of Order 21 Rule 54 of the C. P. C. Aggrieved by this order, the defendant filed an appeal before the District Court Ujjain and the learned District Judge upheld the order of the learned trial Court and hence the present Second appeal has been filed.

The following questions of law were framed by this Court for disposal of the present appeal;

(i) Whether the burden of proving that all formalities required by law for making attachment were duly complied with lay upon the appellant ?

(ii) Whether in facts and circumstances of the case no presumption can be raised that all such formalities were duly complied with ?

(iii) Whether the requirement to affix notice of attachment on the notice board of the office of the Collector is a mandatory provision which makes the attachment wholly ineffective ?

(iv) Whether the finding that no notice of the order of attachment was affixed on the notice board of the Collector, without any evidence.

Both the courts below i.e. trial Court and the appellate Court have taken the view that there was no display of the notice of attachment in the office of Collector, though it was argued before both the courts below that in such cases burden lies on the plaintiff who has not discharged this burden. As such the learned counsel for the appellant has submitted that in the present case, burden of proof lay on the plaintiff as to in what way notice of attachment is bad in law. Learned counsel submitted that the plaintiff has not been able to discharge this burden and hence the notice of attachment cannot be held to be void in accordance with Sec. 114 of the Evidence Act that official acts are presumed to have been done in correct manner unless proved otherwise. Hence the burden of proof that the official act of display of notice of attachment on the notice board in the office of the Collector lay on the plaintiff and the plaintiff has failed to discharge the same and therefore, the finding of both the courts below is totally erroneous and deserves to be set aside.

As against this, learned counsel for the defendant submitted that the fact remains that there is no display of notice of attachment in the notice board in the

office of the Collector; therefore, there is a clear breach of mandatory requirement of Order 21 Rule 54 of the C. P. C.

I have heard learned counsel for the parties and perused the record. Since the plaintiff had brought the suit for declaration of title, burden was on the plaintiff to prove that the official act was not done in the manner as required by law. In this connection, my attention was invited to the case of P. J. Ratnam Vs. D. Kanikaram and Others, wherein their Lordships have observed as under:

.....There would be a presumption of regularity in respect of official and judicial acts and it would be for the party who challenges such regularity to plead and prove his case.

There is therefore no two opinion that the burden lay on the plaintiff to prove as to in what way there was a breach of Order 21 Rule 54 C. P. C. Order 21 Rule 54 C. P. C. read as under:

R.54 Attachment of immoveable property :

(1) Where the property is immoveable, 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.

(1 A) The order shall also require the judgment - debtor to attend court on the specified date to take notice of the date to be fixed for settling the terms of proclamation of the sale.

(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 property and then upon 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 in which the land is situate and where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.

Clause (2) of Rule 54 of Order 21 of the C. P. C. says that 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 property and then upon 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, in which the land is situate and where the property is situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village. In the present case, P. W. 9 Mishrilal has very categorically stated that the judgment was bad on account of the fact that notice of this attachment was not displayed on the land in question. In order to counter this, the defendant has lead the evidence of D. W. 1, who has deposed that the notice of attachment was displayed on the disputed land and has produced documentary evidence as Ex. D1 and Ex. D2. He has stated that this was displayed on the land in question and it was also proclaimed in the village. In view of the above, the defendant had

met the case of the plaintiff that it was wrong to allege that necessary compliance of mandatory provision of Order 21 Rule 54 was not done. it is true that Order 21 Rule 54 is a mandatory provision and its non-compliance would render the attachment void. In this connection, reference can be made to the cases of AIR 1934 217 (Privy Council) Lachh'man Singh v. Firm Disuandhi Ram (AIR 1938 sc 16), Ratha Harijan Vs. Narasingha Rana and Others, , Ramesan Vs. Kunhipalu and Others, . C.L. Kiernander Vs. Benimadhab Khettri, . In the case of AIR 1934 217 (Privy Council) ,. in somewhat similar circumstances it was observed as under :-

The Judicial Commissioner in the present case has held that the attachment has not been proved because there was no direct evidence that a copy of the Order of attachment was affixed in the Collector's office. Their Lordships are of the opinion that there is evidence that the land was attached, and that, in the absence of any evidence to the contrary, it ought to be presumed that all necessary formalities were complied with.

Though the requirement is mandatory but burden of proof has to be discharged by the plaintiff who brings the suit for declaring the attachment to be void. In the present case, the plaintiff has raised a plea that the notice was not displayed on the land; and in order to meet this objection, the defendant has led evidence of DW-2 Narayan and has also produced documents Ex. D1 and D2 to show that the notice of attachment was displayed on the disputed land. Though both the courts below have observed that it is not possible to take a half way house in the matter of presumption u/s 114 Indian Evidence Act, but with great respect, the approach of both the courts below was not correct. First they must have addressed themselves on the question as to on whom the burden lies and then it should have been decided whether the provisions of Order 21 Rule 54 C. P. C. have been complied with or not. The Courts below have only considered a part of evidence led by the defendant and rushed to conclusion that the notice of attachment was not displayed on the notice-board of the office of the Collector. But neither there was such a pleading of the plaintiff, nor this case was put by plaintiff in evidence.

In the present case, the plaintiff has not stated a single word whether the notice was displayed on the notice-board in the office of the Collector or not. Both the courts below have relied on half of the evidence led by the plaintiff that the notice was not displayed on the disputed land. It was not the burden of the defendant to prove that a proper attachment notice was issued or not. The burden initially lay on the plaintiff to prove that the mandatory requirement under Order 21 Rule 54 C. P. C. was not adhered to. The plaintiff pointed out only one flaw in the proceedings that notice of attachment was not displayed on the disputed land in question. The defendant in order to meet the case of the plaintiff led the evidence to show the notice of attachment was displayed on the disputed land. The enquiry should have been stopped here only and should not have proceeded further. It was not the case of the plaintiff that the notice of

attachment was not displayed in the office of the Collector, therefore, the defendant was not required to meet that case. No enquiry was made on the question that the notice was displayed in the office of the Collector or not. Since it was not the case of the plaintiff, obviously, it was not necessary for the defendant to prove the same. The plaintiff himself has not alleged that the notice of attachment was not displayed in the office of the Collector. Hence, it was not necessary for the defendant to rebut the same. In this view of the matter, I am of the view that the approach of both the courts below is totally wrong and misdirected. There is no two opinion that Order 21 Rule 54 C. P. C. is mandatory but one has to allege and prove the violation.

In the present case, one defect was pointed out and the same was met by the defendant. Therefore, there is no necessity to go into the question whether the notice was displayed in the office of the Collector. If that was done, then the defendant would have got the opportunity to meet the same. Here, neither the original record of attachment proceedings was called nor the plaintiff led any evidence to show that the notice of attachment was not displayed in the office of the Collector. As such, there was no occasion for both the courts below to have gone into in this issue in absence of the record of evidence by the plaintiff before them.

In view of my finding above, I am of the opinion that the view taken by both the courts below is totally erroneous and against law. Consequently, the present second appeal is allowed and judgment and decree of both the courts below are set aside and the suit is dismissed. Parties are left to bear their own cost.