
(1962) 02 KL CK 0029
In the High Court Of Kerala
Case No : C.R.P. No. 837 of 1960

G. Sankaran Nair

APPELLANT

Vs

Krishna Pillai Krishna Pillai Kaippally Madathil and Another

RESPONDENT

Date of Decision : 13-02-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46, Order 21 Rule 46C, Order 21 Rule 46I, 115, 4

Citation : AIR 1962 Ker 233 : (1962) 1 KLJ 427

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : T.M. Cherian and George Vadakkal, for the Appellant; K.N. Narayanan Nair and N. Sudhakaran, for the Respondent

Final Decision : Dismissed

Judgement

Govindan Nair, J.—This revision petition by a garnishee raises two questions. One relates to the maintainability of the revision itself and the other about the correctness of the order directing the garnishee to produce the attached amount in court forthwith.

2. The first counter-petitioner had obtained a decree against the second counter-petitioner and thereafter on 23-1-1959 attached a sum of Rs. 200/- alleged to be due from the garnishee to the second counter-petitioner. The garnishee is the Executive Authority of the Chengannoor Panchayat. The second counter-petitioner -- judgment-debtor had deposited the above sum of Rs. 200/- as security in connection with the auction held by the Panchayat for the year 1958-59 relating to the right of selling meat in the Chengannoor Market. This auction, which was confirmed in favour of the judgment-debtor by the Panchayat, was set aside by the High Court in a Writ Application before the order of attachment, above mentioned, was effected. The judgment-debtor was again a successful bidder for the auction to the same right for the following year 1959-60 and it is alleged by the garnishee-revision petitioner that on the 31st of

March 1959, when the auction for the following year was finalised, a larger amount than Rs. 200/- became due to the Panchayat from the judgment-debtor. Though other points were raised in the court below, the only point taken before us in revision relates to the right of the garnishee to adjust the sum of Rs. 200/- as against the claim of the garnishee for a larger amount which had become due to the garnishee on 31-3-1959.

3. Before dealing with the above question, we will deal with the preliminary objection that the revision is not maintainable. In support of this argument, reliance has been placed On Rule 46-I of Order XXI which we extract below:

"46-I. Orders appealable: -- An order made under Rule 46-B, 46-C or 46-E, shall have the same force as a decree and shall be appealable as such."

The order before us is one passed under Rule 46-C of Order XXI and it is therefore urged on the basis of Rule 46-I of that Order and the ruling reported in Narayanaru Nampiathiri Vs. Govindan Nair, , that the revision is not maintainable. We are unable to agree.

4. All that Rule 46-I of Order XXI says is that an order made under Rule 46-C shall have the same force as a decree and shall be appealable as such. The order therefore becomes appealable because it is said to have the same force as a decree. But in determining what force it will have as a decree, it has to be borne in mind that the order has been passed by a court exercising small cause jurisdiction and reference has necessarily to be made to the provisions of the Kerala Small Cause Courts Act, 1957. The only orders of Courts of Small Causes which are made appealable are mentioned in Section 21 of that Act and the order under revision is not One of such orders. Section 21 reads :--

"21. Appeal from certain orders of Court of Small Causes : Where an order specified in Clause (ff) or Clause (h) of Sub-section (1) of Section 104 of the Code of Civil Procedure, 1908 (V of 1908), is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court on any ground on which an appeal from such order would lie under that section."" and Section 23 enacts that

"save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final." Section 22 of the Act says that for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, the High Court may call for the case and pass such order with respect thereto as it deems fit.

5. Section 4 of the CPC provides that nothing in the Code should be deemed to limit or otherwise affect any special or local law or any special jurisdiction or power conferred, or any special form of procedure, by or under any other law for the time being in force. The provisions in the CPC can therefore be read only subject to the specific terms of the Kerala Small Cause Courts Act. It is clear from Sections 21 to 23 of that Act that the order in question is only revisable.

6. Even according to the provisions of the Code of Civil Procedure, an order passed under Rule 46-C of Order XXI has only the force of a decree. But this is a decree passed by a court exercising small cause jurisdiction is clear from Section 30 of the Kerala Small Cause Courts Act which we extract below :

"30. Application of Act and Code to Court so invested as to two Courts :-- A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purpose of this Act and the Code of Civil Procedure, 1908 (V of 1908), be deemed to be different Courts."

If it is a decree passed by a Court exercising small cause jurisdiction, the same is not appealable since the only provision in the CPC which makes a decree appealable has been specifically made not applicable to courts exercising small cause jurisdiction by Section 7(b)(iv) of the Code. With respect, we are unable to agree with the decision in 1981 Ker LT 126 : AIR 1962 Kerala 26), and overrule the same and hold that the revision is maintainable.

7. Passing on to the merits of the case, it is clear from the facts that no amount was due to the garnishes revision petitioner from the judgment-debtor on the date of attachment, viz., 23-1-1959. In order that the garnishee may have a right of adjustment or a right of set off, the debt due to the garnishee must be in existence on the date of attachment. We refer to a passage from Halsbury's Laws of England, Third Edition, Volume 16, paragraph 131 :

"The garnishee is entitled to set off any debt due to him from the judgment-debtor at the date when the order nisi was served upon him, but not debts accruing due afterwards."

One of the rulings relied on for the proposition is Tapp v. Jones (1875) 44 LJ QB 127. It was contended in that case that the garnishee ought not to be deprived of any set off that he might have against the judgment-debtor before the debt due from him is payable. This contention was negatived and it was held that the right of set off cannot be extended to fresh debts accruing due after the date of attachment. The rulings in State v. Bank of Cochin Ltd., 1954 Ker LT 1 : AIR 1954 Trav-Co 243), Amarendra Nath Laha and Another Vs. S. Banerjee and Co., and Raman Nilacantan v. Mathai Augusty AIR 1952 Trav-Co 508, referred to in the course of arguments seem to have no application in deciding the question before us. We therefore hold that the debt, if any, owing from the judgment-debtor to the garnishee having arisen admittedly only on 31-3-1959 and the attachment having been effected on 23-1-1959 the garnishee has no right to adjustment or set off. The order of the court below is right and calls for no interference. We accordingly dismiss the revision petition, but make no order as to costs in the circumstances of the case.