

(1972) 07 KL CK 0002

In the High Court Of Kerala

Case No : Civil Revision Petition No. 1040 of 1971

G.K. Prabhakaran and Co., Irinjalakuda

APPELLANT

Vs

David Traders, Trichur

RESPONDENT

Date of Decision : 03-07-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63, Order 38 Rule 5, 151

Citation : AIR 1973 Ker 1

Hon'ble Judges : T.C. Raghavan, C.J.;V.P. Gopalan Nambiyar, J;G. Viswanatha Iyer, J

Bench : Full Bench

Advocate : Chandrasekharan and Chandrasekhara Menon, for the Appellant; N.K. Sreedharan and M.A.T. Pai, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Iyer, J.—This revision petition has been filed against an order passed by the Munsif Court, Trichur, in I. A. No. 2990 of 1971 in O. S. No. 805 of 1971 by which the learned Munsif refused to enquire into a claim petition filed by the petitioner against an attachment of pro" perty. The plaintiff in that case filed a suit for recovery of a sum of money from the defendants and applied for attachment before judgment of certain movable properties kept in a shop alleged to belong to the defendants. The revision petitioner, on coming to know of this order for attachment, filed an application in Court objecting to the attachment of the movables on the ground that the movables belonged to him and did not belong to the defendants in the case. That petition was dismissed by the learned Munsif as not maintainable on the ground that a petition objecting to the attachment can be entertained only after the attachment was effected. It is against that order that this revision petition is filed.

2. The petitioner contends that the Court will get jurisdiction to attach the property only if the property belongs to the defendants and when a third party

comes forward with an objection that the property does not belong to the defendants the matter can be enquired into by the Court u/s 151 of the CPC even before attachment is effected. The question is whether this contention is correct.

3. No party has a right to insist on" the Court exercising its inherent jurisdiction. This jurisdiction is to be exercised by Court in very exceptional circumstances for which the Code lays down no procedure. The Legislature has made detailed provisions in the Code for various matters. If there are express provisions in the Code covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. The power under the Code need not even be express. It may be implied or can even be implicit from the very nature of the provisions made for covering the contingencies to which they relate.

4. In order to prevent the ends of justice being defeated certain protective orders can be passed by the Court pending suit (see Section 94, C.P.C.). Under Order 38, Rule 5, in a suit for money when, on filing the suit the plaintiff finds that the defendant, with a view to defeat or delay the execution of a decree that may be passed against him, is "attempting to dispose of or otherwise deal with his property, the former can move the Court to call upon the defendant to furnish security and pending that may also seek to attach his property, movable or immovable. The Court can issue an order only if it is satisfied by affidavit or otherwise that the plaintiff has made out a case for attachment before judgment. It is an extraordinary measure and the Court is expected to be very careful in issuing ex parte orders. If a third party is aggrieved by the attachment he can move the Court for raising the attachment. It is only then that his right to move the Court can arise and is recognised. His claim or objection will be investigated in the same manner as a claim petition is enquired into in execution of the decree under Order 21, Rules 58 to 63, C.P.C. The enquiry under these Rules is of a summary nature and the aggrieved party has a right of suit under Order 21, Rule 63 and the period of limitation will be one year under Article 98 of the Limitation Act. All these are covered by express provisions under the Code and the Limitation Act.

5. It is said that if the third party can move the Court only after the property is attached it will be of no assistance to him because by the process of attachment harm would have been done to him. His reputation and credit would have been damaged beyond repair. This risk is safeguarded by the Code itself providing that the Court can issue the order only on being satisfied by affidavit or otherwise of the need for attachment. The risk to the plaintiff in countenancing this ante-attachment claim of the third party is greater. It will more often than not afford an opportunity to the defendant to defeat or delay the seizing of his property and thereby defeat the realisation of the fruits of the decree that may be passed in future. Again, the nature of the enquiry, the character of the order that the Court may pass, its conclusiveness on the rights of parties, the question of a

right of suit that the aggrieved party may have, the period of limitation within which that suit may be filed are all controversial points which may arise as a consequence of the entertaining an application before actual attachment. All these will conflict with the scheme and provisions of the Code and the intention of the Legislature. Hence the inherent power of the Court cannot be invoked to consider the application of the third party before attachment of the property.

6. The learned single Judge and the Division Bench in their orders of reference had doubted the correctness of the decision of the Allahabad High Court in *Radha Kishen Beni Prasad Vs. P.L. Jaitly and Co. and Others*, on this point. We find that the said decision correctly lays down the law and we agree with it.

7. The order of the lower Court is right. The revision petition is without any substance and is hereby dismissed. But, there will be no order as to costs.