(1945) 12 PAT CK 0012

In the Patna High Court

Gopal Dass and Another — APPELLANT

Vs

Abdul Jabber and Another — RESPONDENT

Date of Decision : 20-12-1945

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 60
Trusts Act, 1882 — Section 5

Citation : AIR 1946 Patna 430

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This application is by the decree-holders and arises out of an application which was made in the Court below to attach monies alleged to be standing to the credit of the judgment-debtors in a provident fund called the Provident Fund of the Tin Plate Company of India, Ltd.

2. The Court below has refused to issue an attachment on a consideration of the rules governing the fund. The question for consideration is one that has of recent years been canvassed frequently in the Courts and appears no nearer a solution as different Courts have taken different views and necessarily the rules of each provident fund differ in some particulars from the rules of similar funds. It is a somewhat startling proposition that persons may place their money in deposit in a particular fund entering into an agreement among themselves to the effect of which is said to be that their creditors may be deprived of the right to touch those funds in order to realise dues from a contributor to the fund. Ordinarily a person''s assets are liable for payment of his debts in whatever form he may keep or wherever he may keep them provided they are situate within the jurisdiction of the Court which is asked to proceed against them. This, of course, is subject to statutory prohibitions examples of which are to be found in Section 60, Civil P.C. I am not concerned with the Provident Funds Act in the present in. stance because this case does not come under it. So far as the provisions of Section 60 are concerned, the amount standing to the credit of the judgment-debtor in this case does not come within any of the items mentioned in the

proviso to that section. A difficulty does arise in cases of this nature when contributions to a fund have been vested in trustees.

3. In such cases it may be that the decree-holder is not entitled to obtain against the trustees an attachment order in respect of the amount standing to the credit of a contributor. But apart from the case where the funds are vested in trustees and cases where there are statutory prohibitions against the seizure or attachment of the deposits of a contributor, I cannot understand on what principle such amount is to be considered as beyond the reach of the contributor.

4. I therefore propose only to consider in this case whether the sums standing to the credit of the judgment-debtors in this case are vested in the trustees. I have gone through the rules governing the fund in question. There is no rule vesting the funds in the trustees or stating that the funds are so vested. The only rule which is at all relevant to the question is No. 1 which states that the management of the fund and the control of its monies shall be vested in the trustees who undertake the management without remuneration. While this rule vests the management and control of the funds in persons called trustees, there is no attempt to vest the ownership of the funds in the trustees. In that respect, the rules I am dealing with, differ from the rules which were considered by my learned brother Shearer, J. in C.R. 345 of 1944 and the rules of many of the funds which have been the subject-matter of judicial decision. Language similar to that of Rule 1 of the rules I am concerned with, was the subject-matter of the case which came before the Chief Court of Sind in Ismail Jakria v. Burma Shell Provident Trust Ltd. AIR 1942 Sind 47. The precise language of the rule in that case was: "Management of the fund and the control of its fund shall be vested in Burma Shell Provident Fund Trust, Ltd." The learned Chief Justice observed that the rule did not say that the ownership of the monies vested in the trustees, and he referred to Section 5 of the Trusts Act which provides that no trust in relation to movable properties is valid unless the ownership of the property is transferred to the trustees.

5. In my opinion, the rules with which I am dealing fail to comply with the requirements of Section 5 of the Trusts Act in so far as they have omitted to vest the monies of the fund in the trustees. To adopt the language used in that case the result of this conclusion is that the parties cannot by an agreement among themselves alter their personal law or statute law such as the Civil Procedure Code. To take any other view would, in my opinion, lead to the con-elusion that it is open to persons merely by an agreement among themselves, to place their assets beyond the reach of their creditors in spite of the statute law on the subject. It follows that the order of the Court below must be set aside and an attachment must issue to the holders of this fund requiring them to retain in their hands so much of the contributions, if any, standing to the credit of the judgment-debtors as the Court may direct. The petitioners are entitled to their costs, hearing-fee two gold mohurs.

