

(1894) 12 AHC CK 0002
In the Allahabad High Court

Kuarji Dichit

APPELLANT

Vs

Chedi Lal and Others

RESPONDENT

Date of Decision : 22-12-1894

Acts Referred:

Citation : (1895) ILR (All) 82

Hon'ble Judges : Knox, J; Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Knox and Banerji, JJ.—The appellants held a decree against one Sheomangal Singh, and in execution of it obtained an order from the Court of the Subordinate Judge of Benares for the attachment of some money which was deposited in the Court of the Subordinate Judge of Mirzapur. The amount so attached was transmitted to the Court of the Subordinate Judge of Benares and was deposited in that Court on the 31st of July 1888.

2. The respondent brought a suit in the Court of the Subordinate Judge of Benares against Sheomangal Singh and two other persons, and applied for attachment before judgment of the amount referred to above as the property of his defendants. On the 8th of August 1888, the Court made an order for attachment under the second paragraph of Section 484 of the Code of Civil Procedure. The respondent obtained a decree on the 22nd of August 1888, and applied for payment of the money, for the attachment of which he had obtained an order on the 8th August 1888. His application was refused, and thereupon he brought the present suit claiming two-thirds of the money as the property of his debtors other than Sheomangal Singh.

3. The Court of First Instance dismissed the suit on the ground that the order of attachment made on the 8th of August 1888 was not carried into effect and that there was no valid attachment of the money claimed by the respondent. The Lower Appellate Court has set aside the decree of the Subordinate Judge and

remanded the case for trial on the merits. It is from this order of remand that this appeal has been brought.

4. We must observe that we are unable to accede to the contention of Mr. Jwala Prasad for the respondent, that the respondent was competent to maintain this suit even if there was no attachment of the money claimed by him. That money belonged, according to the allegation of the respondent, to his debtors, and he had no right to claim any portion of it, unless by reason of an attachment made before or after judgment he acquired a title to receive it. It must therefore be determined whether there was a valid attachment on the amount claimed by the respondent on the date on which he instituted his suit.

5. It is clear that on the 8th of August 1888 the Court made an order for the conditional attachment of the money in question under the last paragraph of Section 484 of the Code of Civil Procedure. Mr. Sundar Lal, on behalf of the appellants, has argued that there was no valid attachment for three reasons. He first contended that Sections 483 and 484 contemplated only the attachment of movable property in the possession of the defendant, and not of property which is not in his possession, and he relied in support of his argument on the provisions of Section 484, which directs that the notice issued to the defendant under that section may require him to "produce and place at the disposal of the Court" the property sought to be attached. We are of opinion that the word "property" as used in Sections 483 and 484 is wide enough to include property of every description, movable and immovable, whether in the actual possession of the defendant or in the possession of some other person on his behalf, and that the words in Section 484 relied upon by Mr. Sundar Lal, refer only to such property as is capable of being produced in Court.

6. Mr. Sundar Lal next contended that no notice to show cause as required by Section 484 was issued and therefore there was no valid attachment. The answer to this contention is that the conditional attachment referred to in the last paragraph of that section must precede the issue of a notice to show cause, and therefore the omission to issue the notice cannot invalidate the order for conditional attachment.

7. The third and main ground urged by Mr. Sundar Lal was that no attachment, conditional or otherwise, was made by the Court in the manner required by law. Section 272 of the Code of Civil Procedure, which, by reason of the provisions of Section 486, applies to the attachment of property deposited in a Court, directs that the attachment shall be made by a notice to such Court requesting that such property may be held subject to the further order of the Court which ordered the attachment. In our opinion where the property ordered to be attached is deposited in the Court which made the order for attachment, that order is sufficient notice to itself that the property ordered to be attached is to be held subject to the further orders of the Court and it is not necessary that a separate formal notice should be drawn up. It is no doubt desirable that in all cases a formal notice should be drawn up and placed on the tile of the case to which the

deposit relates, but we are of opinion that the absence of such a notice, where the property attached is deposited in the Court which ordered the attachment, does not vitiate the attachment. In this case an order for conditional attachment under the last paragraph of Section 484 was recorded by the Court. This was, in our opinion, sufficient to create a valid attachment on the money deposited in that Court, and we agree with the learned Judge below in holding that the respondent had a right of suit. We dismiss this appeal with costs.