

(1999) 04 KAR CK 0012

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 2040 of 1999

M.D. Rajendra

APPELLANT

Vs

Syman Fransis

RESPONDENT

Date of Decision : 26-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58 (4), Order 38 Rule 8

Citation : (1999) 4 KarLJ 693

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri M.B. Chandrachood, for the Appellant;

Judgement

1. Heard on maintainability of appeal against the order of the Court below sought to be impugned.

2. It is not in dispute that the impugned order falls within the purview of Rule 8 of Order 38 read with sub-rule (4) of Rule 58, Order 21 of the CPC. By the order in question the Trial Court has raised the attachment before judgment of the vehicle that was effected during pendency of the suit proceeding and has thereby allowed the application of the respondent-claimant. Rule 8 of Order 38 of the CPC states that:

"Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money".

2-A. The provision providing for adjudication of the claims to property attached in execution of a money decree is sub-rule (4) of Rule 58 of Order 21, which reads as under:-

"Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same

conditions as to appeal or otherwise as if it were a decree".

3. Therefore, it becomes clear by force of Rule 8 of Order 38 and sub-rule (4) of Order 21, Rule 58 of the CPC, that the order impugned has to be treated as an appealable decree. It is an admitted position that if the order in question is to be taken as an appealable decree, then the appeal against it lies before the District Court and not to the High Court. Hence, the office objection raised in regard to maintainability of the appeal before this Court is upheld.

4. For the reasons aforesaid, the appeal is dismissed as not maintainable before this Court, keeping open liberty for the appellant to file an appeal, if he is so advised, in the competent Court.