

(1968) 07 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous S.A. No. 41 of 1967

Meghraj

APPELLANT

Vs

Balaji

RESPONDENT

Date of Decision : 15-07-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 47

Citation : (1971) JLI 85

Hon'ble Judges : T.P. Naik, J

Bench : Single Bench

Advocate : V.S. Pandit, for the Appellant; P.S. Khirwadkar, for the Respondent

Judgement

T.P. Naik, J.—The appellant obtained a money-decree in the sum of Rs. 900-against the judgment-debtor Dhanraj. Rupees 400-were realized by the decree-holder. For the balance he started execution proceedings in the year 1964 on the allegation that the judgment-debtor had leased out his fields to one Balaji. The decree-holder applied for a prohibitory order against the said Balaji. Notice was issued to Balaji to show cause why he should not be asked to deposit the debt (lease-money) due from him to the judgment-debtor for payment to the decree-holder. While showing cause, Balaji alleged that he had already made payment of the lease-money to the judgment-debtor on or about 8-11-1964. He thus denied the existence of any debt due from him to the judgment-debtor.

2. The executing Court, in spite of the said denial, enquired into the allegation, viz., whether Balaji had paid the lease-money to the judgment-debtor. It came to the conclusion that Balaji had not paid the amount to the judgment-debtor on the date alleged. He was, therefore, directed to deposit Rs. 800 in Court for payment to the decree-holder.

3. The garnishee Balaji appealed against the aforesaid order to the District Judge who by his order under appeal set aside the order of the executing Court. The decree-holder has now come up in second appeal to this Court.

4. It is contended by the Learned Counsel for the appellant that the order of the executing Court was not appealable and that consequently the District Judge had no right to interfere with the executing Court's order in an appeal filed u/s 47 of the Code of Civil Procedure. In my opinion, the objection shall have to be upheld. The garnishee's objection that the debt is not due does not come within the purview of rules 58 to 63 of order 21; [see *Butchayya v. Krishnamachari* ILR 59 Mad. 966]. The garnishee's denial of the debt cannot be treated as a claim, so as to attract the provisions of rules 58 to 63 *ibid*: (see *Government of United State of Travancore Cochin v. Bank of Cochin Ltd.* AIR 1954 TC 243). It is only where the existence of the debt is admitted, but a question is raised as to the conditions under which it is payable that the aforesaid rules are applicable : (see *Hota Veerabhadhrayya and Another Vs. Bolla Bulli Subbarayudu and Others*, . The decision on the objection of the garnishee Balaji thus does not fall under rule 58 of Order 21. The objection cannot also be said to be one u/s 47 of the CPC because the garnishes for the aforesaid proceedings cannot be said to be a legal representative of the judgment-debtor. As the objection could not be u/s 47, no appeal lay to the District Judge. No appeal would have lain even if the objection had fallen under rule 58 of Order 21, Civil Procedure Code; but as to this I am of opinion that the objection cannot be treated as one under rule 58 of Order 21. The only remedy open to the garnishee was to have come up in revision to this Court or to have filed a suit.

5. However, under the circumstances of the case, as the order of the executing Court had been set aside by the District Judge and a wrong had been righted, though technically in a way not provided by the Act, I *suo motu* take notice of these proceedings u/s 115 of the CPC and set aside the order of the executing Court as one being without jurisdiction.

6. Where the garnishee denies the debt, it is not the business of the Court to inquire if the debt is really due, unless our High Court had framed rules giving the Courts power either to refer the parties to a suit to establish the claim or to determine it in execution proceedings themselves. No such rules have been framed by our Court. But, even so, I am of opinion that the case should go back to the executing Court to give an opportunity to the decree holder to exercise his alleged option whether he would want the alleged debt to be sold or would pray for the appointment of a receiver u/s 51 with power to sue the garnishee for the recovery of the debt due from him. I express no final opinion on the question if and how far the aforesaid two remedies are open to him.

7. The order of the executing Court is, therefore, hereby set aside, as also the order of the District Judge, and the case is remanded to the executing Court for giving an opportunity to the decree-holder to take proper proceedings for the realisation of his decrials debt.

8. Costs of these proceedings shall be borne as incurred.