

(1962) 01 KAR CK 0001

In the Karnataka High Court

Case No : Civil Revision Petition No. 1332 of 1960

M.G. Brothers

APPELLANT

Vs

Shah Tolchand Parswachand and Co. and Another

RESPONDENT

Date of Decision : 11-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 8, 136

Citation : AIR 1963 Kar 147 : AIR 1962 Kar 147

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Advocate : V. Tarakaram, for the Appellant; T.S. Ramachandar, for Respondent 1, for the Respondent

Judgement

A.R. Somnath Iyer, J.—This revision petition is directed against an order made by the District Judge of Bellary, under the provisions of Rule 8 or Order XXXVIII of the Code of Civil Procedure, in the following circumstances :

2. The petitioner in this revision petition brought a suit against respondent 2 in the Court of the Subordinate Judge of Kurnool, for the recovery of Rs. 5811-72 nP., and obtained from that Court an order for the attachment of a lorry which according to him, belonged to respondent 2. The Subordinate Judge, Kurnool, made an order for the attachment of the lorry and since the lorry was in the local limits of the jurisdiction of the District Judge of Bellary, the order of attachment was sent to the District Court of Bellary, for execution. The District Court caused the attachment to be made under the provisions of Section 136 of the Code of Civil Procedure. Thereupon, respondent 1 in this revision petition claiming to be the owner of the lorry, made an application under Rule 8 of Order XXXVIII of the Code of Civil Procedure, for the removal of the attachment. The District Court of Bellary allowed that application on condition that the petitioner should furnish security in the sum of Rs. 15000/-.

3. The contention urged in this revision petition which is brought by the plaintiff, is, that the District Court, Bellary, had no jurisdiction to entertain the claim made

under Rule 8 of Order XXXVIII of the Code of Civil Procedure, and that the only Court before which the application could have been made by respondent 1 was the Court of the subordinate Judge, Kurnool.

4. In my opinion, this contention advanced by Mr. Tarakaram, on behalf of the petitioner, must succeed. It is plain from the language of Rule 8 of Order XXXVIII of the Code of Civil Procedure, that the Court which can make an investigation under the provisions of that rule is the Court which ordered the attachment under Rule 5 of Order XXXVIII of the Code of Civil Procedure. Rule 8 of Order XXXVIII of the CPC reads :-

"Order XXXVIII. * * *

(8) Investigation of claim to property attached before judgment. Where any claim is preferred to property attached before judgment, such claim, shall be investigated in the manner hereinbefore provided for the investigation of claim to property attached in execution of a decree for the payment of money.

* * *."

Rule 5 of Order XXXVIII empowers the Court before which a suit is pending, to direct the attachment of the property of the defendant before judgment. Rule 6 provides for the attachment where an order of conditional attachment is made and no security is furnished. Rule 7 provides for the mode of attachment, and then occurs Rule 8 which provides for the investigation of a claim to property attached before judgment. Although Rule 8 does not specify the Court before which a claim may be preferred to the attached property, it is obvious, having regard to the position of that rule in the fascicle of the rules to which I have referred, that the Court before which such claim may be preferred, is the Court which directed the attachment to be made.

5. Mr. Ramachandra, appearing on behalf of respondent 1, however, contended that since Rule 8 directs the investigation of the claim in the manner in which an investigation of a claim to property attached in execution of a decree has to be made, it was possible for respondent 1 to prefer his claim before the District Judge of Bellary.

6. That part of Rule 8 of Order XXXVIII merely refers to the procedure to be adopted for the investigation of the claim, and cannot assist the argument advanced by Mr. Ramachandra that the claim referred to in that rule may be made even before the District Court, which is under an obligation to make the attachment as directed by Section 136 of the Code of Civil Procedure. That section reads :

"136. Procedure where person to be arrested or property to be attached is outside district. --(1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which

the application is made, the Court may, in its discretion, issue a warrant of arrest ,or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court * * *."

7. It is clear from the provisions of this section that if the Court before which the suit is pending makes an order that property situate outside its jurisdiction shall be attached, and that order is sent to the District Court within the local limits of whose jurisdiction the property to be attached is situate, the District Court to which that order is sent is under a statutory obligation to effect the attachment and inform the attaching Court that the attachment has been effected. The only power which, therefore, the District Court in such circumstances can exercise is to make the attachment. The moment it effects the attachment and informs the Court at whose instance the attachment is effected, it becomes functus officio ceasing to have any further jurisdiction or power in that regard.

8. That that is the correct construction to be placed on Sub-section (2) of Section 136 is clear from Sub-section (3) of that section, which empowers the District Court, in a case where it makes an order of arrest under the provisions of that section, to release the person arrested if he furnishes sufficient security. If an express provision to that effect is contained in Sub-section (3), covering only cases of arrest, and if no similar provision is made for the removal of attachment if the person asking for the removal of the attachment offers to furnish security, it is clear that the District Court does not have the power, when it attaches property u/s 136, to release the property from attachment after having effected it, even if anyone offers to furnish security for the purpose of obtaining such removal.

9. Now, in this case, the defendant against whom the suit was brought in the Kurnool Court did not himself ask for the removal of the attachment. Respondent 1 who was not a party to that suit and who claimed to be the owner of the lorry wanted that claim to be investigated by the District Court. I fail to understand how the District Court can have any power to investigate such claim. The Court which has the power to investigate that claim is the Kurnool Court, and if respondent 1 wished to have the removal of the attachment on the ground that

he was the owner of the lorry, the only course open to him was to make an application for that purpose to the Kurnool Court.

10. This, in my opinion, is what plainly emerges from the provisions of Rule 8 of Order XXXVIII of the CPC and Section 136. Any other view might lead to a clash of jurisdictions such as might arise if a plaintiff in the suit brought by him asks the Court which orders the attachment, for an order that the attachment shall continue and an order to that effect is made but a claim is preferred before the District Court which makes the attachment, and the District Court allows the claim.

11. I, therefore, come to the conclusion that the District Court in this case had no jurisdiction to investigate the claim preferred by respondent 1. The order under revision is accordingly set aside.

12. In the circumstances there will be no order as to costs.