
(1933) 04 AHC CK 0024
In the Allahabad High Court

Moti Ram

APPELLANT

Vs

Karim

RESPONDENT

Date of Decision : 03-04-1933

Acts Referred:

Citation : (1933) 04 AHC CK 0024

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Judgement

Mukerji, J.—This is an application in revision against an order of the Judge Small Cause Court. It appears that before the decree was passed in the suit the decree-holder Moti Ram who is the applicant before me asked for the attachment of a debt said to have been due by the respondent Karim to the judgment-debtors., and when the attachment was made Karim came forward and put forward four objections. One of these was that the Small Cause Court had no jurisdiction to issue an injunction, and another was that Karim owed nothing to the judgment-debtors. The objections were dismissed, the Court holding that what had been was not an injunction but an order on attachment. Nothing was decided as to Karim's liability. When the decree was passed in favour of the decree-holder he proceeded to execute it and Karim thereupon contended that he owed nothing to the judgment-debtors and was not liable to pay anything in pursuance on the garnishee order. The learned Judge in the Court below held that Karim did not owe anything and therefore he was not liable.

2. Against this order the learned advocate contends that on two grounds the order was objectionable. The first ground is that Karim made an objection under Order 38, Rule 8, Civil P.C., and if his objection was disallowed his remedy lay in instituting a suit within one year of the order and not in filing a second objection. The plain answer to this contention is that Karim's objection was not one under Order 38, Rule 8, Civil P.C. It was not the case that Karim was contending that the property attached belonged to him and not to the judgment-debtors. The case quoted by the learned Counsel Arunachalam Chetty and Another Vs.

Periasami Servai and Others, , is inapplicable. The next point is that Karim's objection having been dismissed in the proceedings of attachment before judgment Karim's objection should have been dismissed as barred on the principle of res judicata. The case of Gulab and Others Vs. Mutasaddi Lal, has been relied on.

3. Neither the case is applicable nor the principle contended for. When there was an attachment before judgment, time had not arrived for the consideration of the question whether anything was due by Karim to the judgment-debtor. No decree had yet been made. If this be so, then, the only time when the question could be decided was when the garnishee order was going to be enforced. Supposing however that Karim's objection that he owed nothing to the judgment-debtors could be heard in the stage of attachment before judgment, the fact that the question was not determined is enough to enable Karim to ask the Court to consider the point and decide it. No constructive rule of res judicata is applicable in the circumstances. The case quoted is entirely different. The application fails and is hereby dismissed with costs.