
(1970) 07 AP CK 0009
In the Andhra Pradesh High Court
Case No : A.A.A.O. No. 24 of 1969

Nadikatla Anjanna and Others	Vs	APPELLANT
Bandi Ramakrishna and Others		RESPONDENT

Date of Decision : 17-07-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46

Citation : AIR 1971 AP 165

Hon'ble Judges : Venkateswara Rao, J

Bench : Single Bench

Advocate : M. Jagannatha Rao and M. Krishna Mohan Rao, for the Appellant; M. Rajasekhra Reddy and P. Ramakrishna Raju, for the Respondent

Judgement

1. This appeal arises out of proceedings under Order 21, Rule 46 Civil P.C. Garnishees Nos. 1 to 5,8,9,11 and 12 are the appellants before the Court.
2. In execution of a decree obtained by him on O.S. 18/64 on the file of the Subordinate Judge, Eeluru, the respondents herein applied in E.P. 188/66 to the Court of the First Additional District Munsif, Tannuku, for attachment under Order 21, Rule 46, Civil P.C. of a 1/5th share of the rent alleged to be due to the judgment-debtors from the appellants and 3 others in respect of certain properties held by them as tenants. Garnishees Nos.6, 7 and 10 filed counter denying that they are tenants in respect of any lands belonging to the Judgment-debtors . The other garnishees resisted the application contending inter alia that they have already paid away whatever was due by them to the judgment-debtors and that there was, therefore, nothing more for being attached pursuant to the decree and that the attachment is, in any view. illegal as the debt due by them did not become payable at the date on which the application for attachment was made and also because a debt, which due jointly to the judgment debtors and others, is not liable for attachment under Order 21, Rule 46, Civil P.C. The executing Court exonerated respondents Nos.6 7 and 10 in the petition; and having negated the objections raised by the other respondents (appellants)

made the attachment absolute and directed them to deposit was confirmed in appeal by the learned District. Judge, West Godavai. Hence this further appeal

3. Two grounds are urged in support of this appeal by Sri Jagannatha Rao, the learned counsel for the appellants to question the validity of the attachment and they are (1) the debt did not become due to the judgment-debtors at the date on which the decree-holder applied for its attachment and the attachment ordered by the executing Court. was, therefore, one of a contingent debt. and (2) the debt being one due both to the judgment-debtors and some other persons is not liable for attachment.

4. It is not in dispute that the application for attachment in this case made even before the rent which the appellants owed to the judgment-debtors fell due; though the attachment was actually effected on 24-8-1967 i.e., nearly 7 months after the debt became due. It is contended for the appellants that the application having been made prior to the date on which the debt became due. the attachment ordered in this case should be deemed to be one in respect of a contingent debt and is, therefore, bad. V.V. Subbarao Vs. Mohammad Hussain Khan, . is relied upon in support of this contention. I am afraid that this decision does not render any assistance to the appellants since all that has been held in that case is that the salary of a private employee cannot be attached in advance or in anticipation its being become due. The learned Judge referred in the course of his judgment to Webb v. Stention (1883) 111 QBD 518, in which it seems to have been pointed out that "there was no debt owing or accruing at the time when the order was applied for which could be attached under O.45. R. 2" but a perusal of (1883) 11 QBD 518, itself does not seem to warrant the inference that not only the attachment but also the application for attachment should be made only after the debt becomes due. All that was indicated in that decision also is that there must be an actual debt existing at the time the order of attachment was made. So, what is prohibited from being attached is a contingency or a debt which is to become payable in future and not a debt that has already become due. It is the date of attachment and not the date on which the application for attachment was made that is material. If the debt was due by the date of which the attachment was effected, there cannot be any valid objection against the same simply because the application for its attachment was made even before it became due. As the debt in this case admittedly became payable by the date on which it was attached, the appellants cannot be heard to contend that the attachment was of a contingent debt and is, therefore, bad.

5. The other objection against the validity of the attachment however seems to be well-founded. It was held in Macdonald v. Tacquash Gold Mines Co. (1884) 13 QBD 535, that the debt. legal or equitable, owing by a garnishee to a judgment-debtor, which can be attached to answer the judgment debt, must be a debt due to such judgment-debtor alone, and where it is only due to him jointly with another person, it can not be so attached. This view was approved by the Indian Courts and it will suffice to refer to one such decision viz., Batch v. Sulaiman

Sahib AIR 1956 Mad 163, in which it was held that under O.21. R. 46 Civil P.C. an attachment can be made of a debt due to a judgment-debtor, and another, learned counsel for the respondent has not been able to refer me to any decision controllable to refer me to any decision contra. I must, therefore agree with the appellants that the attachment effected by the Court below is not valid for this reason.

The order of the Court below is accordingly reversed and E.P. 188/66 is dismissed. The parties are directed to bear their respective costs throughout in the circumstances of the case.

6. Order accordingly.