

(1961) 01 KL CK 0009
In the High Court Of Kerala
Case No : C.R.P. No. 517 of 1959

Narayanaru Nampiathiri

APPELLANT

Vs

Govindan Nair

RESPONDENT

Date of Decision : 12-01-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 46C, Order 21 Rule 46I, Order 50 Rule 1, 115

Citation : AIR 1962 Ker 26 : (1961) 5 KLJ 199

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : D. Narayanan Potti, for the Appellant; T.S. Krishnamurthy Iyer and G. Rajasekhara Menon, for the Respondent

Judgement

M. Madhavan Nair, J.—The decree-holder in Small Cause Suit No. 37 of 1957 on the file of the Pathanamthitta Munsiff's Court attached the unpaid purchase money due from the petitioner in this C. R. P. to the 2nd defendant in the case. The petitioner contended that he had discharged the amount payable to the 2nd defendant under two unregistered receipts on dates prior to the attachment and therefore he was not liable to pay anything under the attachment. The liability of the petitioner was therefore enquired into by the learned Munsiff under Rule 46-C of Order XXI, C. P. C. and it was found that the discharge pleaded was untrue and that the garnishee was liable to deposit the amount in court as per the attachment. The garnishee has come up for a revision of the above-said order.

2. It is pointed out by the learned counsel for the respondent that the impugned order is appealable under Rule 46-1 of Order XXI, C. P. C. and therefore this petition for revision of the same is incompetent.

3. Order XXI, Rule 46-1 reads :

"46-1. Orders appealable: An order made under rules 46-B, 46-C or 46-E, shall have the same force as a decree and shall be appealable as such."

The learned counsel for the petitioner would however say that the order having been made by a Small Cause Court no appeal lies therefrom. I am afraid that this contention proceeds on a misunderstanding of the provisions of Order L. C. P. C. Order L, Rule 1 excludes only so much of the First Schedule of the CPC as relates to "the execution of decree against immovable property or the interest of a partner in partnership property" from being applied by Courts of Small Cause jurisdiction.

It is clear therefore that the provisions of Order XXI relating to process against movable properties of judgment-debtors can be invoked by Small Cause Courts also. A proceeding in garnishee relates only to movable assets of the judgment-debtor; as such an order under Rule 46-C of Order XXI, C. P. C. passed by Small Cause Court is appealable under Rule 46-1 to Order XXI CPC. The exclusion of the applicability of Section 96 to 112 and Orders XLI to XLV to Small Cause suits cannot affect the question because the appealability of orders in garnishee is expressly provided in Rule 46-1 of Order XXI and not in any of these excepted Sections or Orders. I hold therefore that the order in question is appealable; and as such this petition for revision of the same is not maintainable. The petition will however be returned to the petitioner.