
(1965) 05 AHC CK 0017
In the Allahabad High Court
Case No : Second Appeal No. 1509 of 1960

Shyam Lal and Another	Vs	APPELLANT
Firm Poonam Chand Manilal		RESPONDENT

Date of Decision : 07-05-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Citation : AIR 1966 All 250

Hon'ble Judges : V.G. Oak, J;D.D. Seth, J

Bench : Division Bench

Advocate : J. Swarup, for the Appellant; Hari Swarup, for the Respondent

Final Decision : Allowed

Judgement

Oak, J.—This Second Appeal arises out of a proceeding u/s 145, C. P. C. A. firm. Messrs. Sunder Lal Tikam Das of Bombay held against another firm Messrs. Padimchand and Company one decree. That was decree No 47 of 1954. In execution of that decree certain goods were attached. There was another decree against Messrs, Padamchand and Company in favour of another firm Messrs. Pooran Ghana Mani Lal of Ahmedabad. That was decree No. 1,482 of 1931. At the instance of Firm Pooran Chand Mani Lal of Ahmedabad, the same property was attacked. Attachment order was issued on 6-10-1935; and the notice of attachment was served on 15-16-1955 on Shyam Lal and Raja Ram, who had been appointed custodians by the Court in execution of decree No. 47 of 1954. In the meanwhile decree No. 47 of 1954 had been satisfied; and the order of attachment in decree No. 47 of 1954 was withdrawn on 12-10-1955. In view of the Supurdars failure to produce the goods in question in execution of decree No. 1,462 of 1951, the Ahmedabad firm applied for action u/s 145, C. P. C. against the Supurdars. The Supurdars objected that they were not thus liable under decree No. 1,462 of 1951. Their objection was overruled by the learned Civil Judge of Agra. He passed in favour of the Ahmedabad firm a decree for Rs. 4554 against the two Supurdars u/s 145, C P C. That decision was upheld in appeal by

the learned Additional District Judge of Agra. Shyam Lal and Raja Ram, custodians have come to this Court in Second Appeal.

2. When the Second Appeal came up for hearing before a learned Single Judge, he noticed that the liability of custodians under such circumstances raises a question of law of some difficulty. He, therefore, referred this case to a larger Bench.

3. It is to be noted that initially the goods were attached in execution of decree No. 47 of 1954. That decree was satisfied; and the order of attachment was withdrawn on 12-10-1955. It was at this stage that the custodians returned the goods to the judgment-debtor without obtaining any order on the point from the execution Court. The first question for consideration is whether the custodians were justified in returning the goods to the judgment-debtor without obtaining directions from the Court.

4. In Jageshar Prasad Vs. Mt. Janki, , the facts were somewhat similar to those in the present case. A motor car was attached in execution of a decree, and was handed over to Jageshar Prasad for safe custody, Mst. Janki's husband obtained another decree. In execution of that decree a warrant of attachment was issued with respect to the same motorcar, In the meanwhile Jageshar Prasad had returned the motor car to the judgment-debtor on the ground that the first decree had been satisfied. It was held that the custodian could not plead want of notice of the second attachment so as to escape his liability. In that case the Subordinate Judge called upon the custodian to hand over the motor car. That direction was upheld by Allahabad High Court in revision. There is no specific mention in that judgment about proceedings u/s 145, C P. C. for recovering damages from the custodian.

5. In Genda Mal Vs. L. Sukhdarshan Lal, , certain property was attached in execution of an ex parte decree. The ex parte decree was set aside on 20-4-32. Genda Mal was the custodian of the property attached. On 4-6-1932 he handed over the property to a third party, who had filed an objection under Order XXI, Rule 58, C. P. C. before the disposal of that objection. It was held that the custodian could not exonerate himself from the liability imposed on him on the ground that he, in good faith, handed over the property to a third person. It was his duty to obtain instructions of the Court before handing over the property Which had been given under his charge.

6. On the authority of these two cases, we are prepared to assume that the appellants were wrong in returning the goods in the instant case to the judgment-debtor without obtaining instructions from the execution Court, The question remains whether any action u/s 145 could be taken against the custodians at the instance of the Ahmedabad firm.

7. Section 145, C. P. C. has been amended by U. P. Act No. XXIV of 1954. After the amendment, Section 145, C. P. C. now runs thus:--

"Where any person has become liable as surety or given any property as security-

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon; the decree or order may be executed in the manner herein provided for the execution of decrees,

(i) if he has rendered himself personally liable against him to that extent and

(ii) if he has given any property as security, by sale of such property to the extent of the security; and such person shall, for the purposes of appeal, be deemed to be a party within the meaning of Section 17: ,

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

Explanation.--For the purposes of this section a person entrusted by a Court with custody of any property attached in execution of any decree or order shall be deemed to have become liable as surety for the restitution of such property within the meaning of Clause (b)."

Mr. Hari Swamp, appearing for the respondent, urged that the present case is governed by Clause (b) of Section 145, C. P. C. Clause (b) of Section 145, C. P. C. is:--

"for the restitution of any property taken in execution of a decree."

It is laid down in Section 145, C. P. C. that, if a case falls under any of the three Clauses (a), (b) and (c), the decree or order may be executed in the manner provided for the execution of decree against the custodian. The expression "the decree" used in Section 145 must be understood in the same sense as the expression "a decree" used in Clause (b) of Section 145, C. P. C. It means that if a property has been attached in a particular decree, that particular decree may be executed against the custodian in the prescribed manner.

8. Mr. Hari Swarup contended that, although that might be the position under the unamended Section 145, Civil Procedure Code, the position is materially altered under the Explanation to Section 145, C. P. C. He pointed out that the expression used in the Explanation is: "custody of any property attached in execution of any decree or order"" Relying on the expression "any decree" appearing in the Explanation, Mr. Hari Swarup contended that the effect is that action u/s 145, C. P. C. may be taken by any decree-holder. We do not think that that is the effect of the Explanation. It may be pointed out that the explanation ends with a reference to Clause (b). The Explanation was meant to point out the true effect of Clause (b) of Section 145, C. P. C. The Explanation does not materially alter the general plan of Section 145, C. P. C.

9. The general plan of Section 145 C. P. C. is this. If a property is seized in execution of a decree and made over to a custodian, and the custodian commits default, that decree may be executed in the prescribed manner This provision is meant for the protection of the decree-holder, at whose instance the property was attached and made over to a custodian. The provision is not meant for the benefit of all the persons, who hold various decrees against the same judgment-debtor.

10. In the instant case the goods were attached in execution of the decree held by the Bombay firm. The decree in favour of the Bombay firm was satisfied, and that attachment was withdrawn. It was then that the custodians handed over the goods to the judgment-debtor. Obviously, the Bombay firm had no further interest in the matter. It is the Ahmedabad firm, which instituted proceedings u/s 145, C. P. C. It may be that the Ahmedabad firm was entitled to re-attach the same property in spite of satisfaction of the decree held by the Bombay firm. The property could not be re-attached on the ground that the custodians had returned it to the judgment-debtor The goods had never been left in the custody of the appellants at the instance of the Ahmedabad firm. So the Ahmedabad firm could not take any action against the custodians u/s 145, C. P. C. The lower Courts were wrong in holding that, under the circumstances of the case, the Ahmedabad firm could recover any money from the appellants u/s 145 C. P. C. Since the point is not free from difficulty parties may be directed to bear the own costs throughout.

11. The appeal is allowed, and the application u/s 145, C. P. C. is dismissed. Parties shall bear their own costs in all the Courts.