

(2012) 10 KAR CK 0084

In the Karnataka High Court

Case No : Regular Second Appeal No. 7522 of 2010

State Bank of India

APPELLANT

Vs

Rajshekhar and Others

RESPONDENT

Date of Decision : 01-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 58, Order 21 Rule 58 (1) (a), Order 21 Rule 58(2), Order 21 Rule 58(4)

Citation : (2012) 10 KAR CK 0084

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : Manvendra Reddy, for the Appellant; Ashok S. Kinagi for Respondent-3, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—The decree holder has preferred this second appeal questioning the Judgment and Decree passed in R.A. 8/2004 dated 15.01.2010 by the Presiding Officer, Fast Track Court-I, Bidar, whereunder order dated 23.02.2004 passed by the Civil Judge (Sr. Dn), Basavakalyan in E.P. 127/1995 allowing the execution petition by holding decree holder-bank is entitled to obtain fixed deposit amount for realisation of the decretal amount came to be reversed and application filed under Order XXI Rule 58 by the appellant came to be allowed. Heard Sri. Manvendra Reddy, learned Counsel appearing for appellant and Sri. Ashok S. Kinagi, learned Counsel appearing for third respondent-decree holder. Notice to respondent Nos. 1 and 2 has been dispensed with by order dated 31.01.2011. Though matter is listed for admission by consent of learned advocates same is taken up for final hearing. It is also agreed by the learned advocates appearing for the parties that following substantial questions of law would arise for consideration;

(i) Whether claim can be preferred or objection raised to attachment of property after the sale of attached property if it has been conclusively sold?

OR

Whether under clause (a) of proviso to sub-rule (1) of Rule 58 of Order XXI would be a bar to prefer claim or raise objection to the attachment of the property attached in execution of a decree on the ground that sale has already concluded?

(ii) Whether the appeal filed by the third respondent in R.A. 8/2004 was not maintainable in view of the bar under sub-rule (5) of Rule 58 of Order XXI C.P.C.?

(iii) Whether the first appellate Court was justified in allowing the application filed by third respondent under Order XXI Rule 58 of C.P.C. in the facts, and circumstances of the case?

2. Facts in brief leading to filing of this appeal are as under:

The appellant State Bank of India, Humnabad (hereinafter referred to as "bank" for brevity) filed a suit for recovery of money against respondent Nos. 1 and 2 and obtained a decree. To realise the decretal amount execution petition was filed and in the said execution petition third respondent herein namely Karnataka State Financial Corporation, Bidar Branch, (hereinafter referred to as "KSFC" for brevity) filed an application for raising the attachment and sought for rejection of the execution petition on the ground that KSFC has sanctioned loan amount to the respondent Nos. 1 and 2 herein (hereinafter referred to as "JDR"s" for brevity) and there was first charge over the properties sold in auction and the bank was not entitled to the amount realised by it by way of sale. The executing Court did not accept the claim of the KSFC and allowed the execution petition by order dated 23.02.2004.

3. Aggrieved by this order KSFC preferred an appeal in R.A. 8/2004 by reiterating its contentions raised in the application filed under Order XXI Rule 58. After considering the arguments of the respective learned advocates the lower appellate Court formulated the, following points for its determination:

(i) Whether the order of the trial Court on the application under Order XXI Rule 58 of C.P.C. filed by the appellants incorrect and liable to be set aside?

(ii) Whether the appellant has made out sufficient grounds for interference of this Court into the said order of the lower Court?

(iii) What order?

4. Points 1 and 2 came to be answered in the affirmative by judgment dated 15.01.2010 by allowing the appeal.

5. It is the contention of Sri. Manvendra Reddy the judgment and decree passed by lower Appellate Court is illegal and the only recourse left open to the aggrieved party was to file a suit as contemplated under sub-rule (5) of Rule 58 of Order XXI and as such appeal could not have been filed by third respondent before lower appellate Court; he would also contend that the order of the trial

Court is conclusive and binding on the parties and aggrieved party had to file a separate suit as per sub-rule (5) of Rule 58 of Order XXI. He would also submit that property in question had been sold and as such application filed by third respondent under Order XXI Rule 58 was not maintainable and as such the lower appellate Court committed a serious error in interfering with the order of trial Court when the sale has concluded. In support of his submissions he relies upon clause (a) of proviso to sub-rule (1) of Rule 58 of Order XXI and prays for allowing the appeal by answering the substantial question of law in favour of the appellant.

6. Per contra, Sri. Ashok S. Kinagi, learned Counsel appearing for KSFC would support the judgment and decree passed by the lower appellate Court and contends that the word "sale" or "auction sale" referred to under Order XXI Rule 58 would mean and include only concluded sale and in the instant case the sale was not concluded as borne out from the records namely order sheet of the executing Court which reflects that even before conducting of the Court sale on 08.12.1995 KSFC had filed an application inter alia contending that it had first charge over the movable properties which had been sold in auction and as such the execution petition could not have been allowed declining the claim of KSFC. In support of his submission he relies upon the Judgment in the case of Kancherla Lakshminarayana Vs. Mattaparthi Syamala and Others, .

7. Having heard the learned advocates appearing for the parties the following undisputed facts would emerge namely;

The appellant-bank filed suit for recovery of money of Rs. 57,705.10p against respondent Nos. 1 and 2 herein in O.S. 152/1992 before the Civil Judge, Bidar on the ground that amount of loan obtained by these respondents was not repaid. On contest the said suit came to be decreed by Judgment and decree dated 06.03.1993. To recover the decretal amount appellant-bank filed execution petition on 19.04.1994 which came to be numbered as 28/1994. On 21.04.1994 attachment order was issued. The said Court found that the execution petition cannot be tried for want of jurisdiction and as such order passed by it came to be recalled on 26.09.1995 and it further ordered for return of the file to the learned advocate of decree holder for being submitted before the competent Court. Subsequently execution petition was filed before the Civil Judge, Basavakalyan on, 29.09.1995 which came to be numbered as Execution Petition 127/199, 5 and order came to be passed on the said date directing registering the execution petition and issuance of warrant of attachment of movables. On 27.10.1995 it was noticed by the executing Court that attachment warrant issued was executed and sale proclamation and sale warrant was ordered by fixing the sale dates as under:

8. On 08.12.1995 I.A. No. I under Order XXI Rule 58 of C.P.C. and I.A. No. II for stay of sale came to be filed by the third respondent herein. Since the warrant had been returned by conducting spot sale as already ordered and Court sale was yet to be held, by consent of the learned advocates the conducting of the

Court sale was adjourned to 22.12.1995 and opportunity was given to the decree holder to file objections to I.A.I and II and ordered for listing the matter on 15.12.1995,. Accordingly objections were filed. Hatter was again listed on 22.12.1995 and thereafter to 03.01.1996. On the said date the learned advocate appearing for decree holder as well as third party (third respondent herein) submitted that they have no objection for conducting Court sale and permitting the highest bidder to deposit the money and take possession of the auction property and also submitted to keep the amount realised in fixed deposit till the claim petition is disposed of. Accordingly the highest bid was accepted and the bidder was directed to deposit the balance amount on or before 05.01.1996. Thereafter I.A.I i.e., claim petition was taken up for adjudication by the trial Court and after recording evidence by Order dated 23.02.2004 allowed the execution petition by holding that decree holder-bank is entitled to receive the proceeds of the fixed deposit amount by order dated 23.02.2004.

9. Third respondent-KSFC filed an appeal before the lower appellate Court in R.A. 8/2004 which came to be allowed by setting aside the order of the executing Court and permitting the appellant to withdraw the auction amount by deducting the expenses incurred by bank for purposes of attachment and auctions, which has been called in question in this appeal by the bank.

RE: QUESTION NO. (i):

10. In order to delve upon rival contentions it would be of utmost necessity to extract Order XXI Rule 58 which has been pressed into service by both the parties. Same reads as under:

Order XXI Rule 58.--Adjudication of claims to, or objections to attachment of property -(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained-

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court

shall, in accordance with such determination-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

11. A perusal of the above provision would indicate that when a claim is preferred to or objection is made to the attachment of any property attached in execution of a decree on the ground such property is not liable to such attachment the Court is required to adjudicate upon such claim or objection. However such claim or objection need not be entertained by such Court if the claim is preferred or objection is made after the attached property has already been sold or if the Court considers that claim or objection was designedly or unnecessarily delayed as provided under clause (a) and (b) respectively to proviso to sub-rule (1) of Rule 58.

12. In the instant case the attachment was issued at the first instance in execution 28/94 on 21.04.1994 by the Court of Munsiff, Humnabad and it came to be recalled on 26.09.1995 for want of jurisdiction. Subsequently the Civil Judge (Sr. Dn), Basavakalyan, had issued "warrant of attachment of movables" on 27.10.1995 and ordered for issuance of sale proclamation and sale warrant by order dated 27.10.1995. Sale proclamation was made on 03.11.1995 and spot sale was conducted on 01.12.1995. Court sale was to take place on 08.12.1995. On the said date i.e., on 08.12.1995 itself KSFC filed two applications namely I.A.I under Order XXI Rule 58 and I.A. II u/s 151 of C.P.C. for stay. On the said date Court sale was not conducted and by consent of learned advocates and it stood adjourned to 22.12.1995.

13. Thereafter from time to time Court sale was adjourned and on 03.01.96 the learned advocates appearing for bank and KSFC gave their no objection for conducting Court sale and agreed to deposit the auction proceeds in a fixed deposit, to be in deposit till the claim petition is disposed of. Thereafter parties tendered their evidence both oral and documentary and adjudication was made

by the executing Court by allowing the execution petition.

14. At this juncture it has to be examined that whether the executing Court could have entertained the claim of KSFC on the premise that sale was concluded. A reading of Order XXI Rule 58 as a whole would make it explicitly clear that bar to entertain such claim as provided under clause (a) to proviso to sub-rule (1) would be attracted only if the claim is preferred or objection is made after the property attached has already been sold. In other words if such claim or objection is made after the attached property has been sold such Court is not required to examine the claim and it can be rejected at the threshold since the property had already been sold. Thus, definition of the word "Sale" or "Sold" would be pivotal in the instant case, since the bank claims that the attached property had been sold by the time KSFC filled application under Order XXI Rule 58 and on the other hand KSFC contends that there are different steps in the sale and until and unless the sale is concluded the embargo prescribed under clause (a) of proviso to sub-rule (1) would not get attracted. The Hon'ble Supreme Court has considered as to when a sale would become conclusive in the case of Ghanshyamdas and another Vs. Om Parkash and another, and it has been held as under:

11. It is correct to hold, as the High Court has done, that the proceedings taken by Jamnadas under Order 21, Rule 58 and Rule 63 of the Code would not constitute res judicata. But, where no objection was raised to the auction sale when such objections ought to have been raised, would disentitle the appellants to raise the same. Thus, on questions of law, as determined by the Court of appeal and confirmed by the High Court, we see no reason to interfere. However, we think equitable considerations will have to prevail in this case, for the following reasons:

1. Admittedly, Jamnadas was the owner of 1/2 share, he being the joint purchaser along with Balkishan and Laxminarayan.

2. 1/2 share of the suit house came to be decreed in favour of Jamnadas in Civil Suit No. 554 of 1964. That was appealed against by Balkishan in Civil Appeal No. 67 of 1970 before the District Judge, Amrawati unsuccessfully. Thereafter Balkishan preferred Second Appeal No. 240 of 1969 which was dismissed. Ultimately, a compromise was entered into and the partition decree was modified accordingly. Inter alia the compromise memo provided that the southern portion will go to the share of Jamnadas while northern portion will fall to the share of Balkishan.

3. Pursuant to this, possession was taken by the appellants.

4. In law, no doubt, the title of Gian Chand had become indefeasible as pointed out above but the 1/2 share belonging to Jamnadas could not have been sold in execution of a decree to which he was not a party. In this regard, we merely note the plea that the decree in Civil Suit No. 133 of 1964 itself was collusive. However, we make it clear that we are not going into that plea nor can we do so.

12. In view of the above, we think the ends of justice would be met by directing payment of a sum of Rs. 50,000/- (Rupees Fifty Thousand) by the appellants to the respondents in lieu of recovery of possession of the southern 1/2 share. This is in addition to the damages which have come to be awarded in favour of the respondents. Thus, the decree for recovery of possession Will stand modified in the above terms.

15. Yet again the Hon"ble Supreme Court in Kancherla Lakshminarayana Vs. Mattaparthi Syamala and Others, has held an attachment cannot be free from prior obligations and necessary sequatur is that after the factum of sale the objection would still lie before the sale is made absolute. In the said judgment it has been held as under:

12-Reverting back to the Judgment Of Andhra Pradesh High Court xxx were approved. Thus in considering the "time factor" of challenging the sale, the judgment also considers the "locus standi factor" on account of any prior interest of the objector in the suit property. This situation is very conspicuously absent in the judgment of the Patna High Court which has merely chosen to go by the language of Section 65 C.P.C. We must hasten to add that even if u/s 65 C.P.C. the title "after the sale has been made absolute under Rule 92" relates back to the date of sale, it would still be subject to the earlier rights of the objector and his interest in the suit property. Therefore, in our opinion Section 65 would not, by itself, provide any guidance regarding the interpretation of the term "sold" in the said proviso. Once it is held, as has been confirmed by this Court in Vannarakkal Kallalathil Sreedharan"s case that the attachment cannot be free from the obligations under the contract of sale, then the necessary sequatur must follow that even after the factum of sale the objection would still lie before the sale is made absolute. In our opinion, therefore, the law laid down by the Andhra Pradesh High Court in M/s. Magunta Mining Co"s case is preferable to the law laid down by the Patna High Court in Kewal Singh"s case.

14. Again, it cannot be said that the present appellant has no locus standi to raise an objection to the sale for the simple reason that he had filed a suit on the basis of an Agreement of Sale. The factum of the Agreement of Sale was not denied by the second respondent. Therefore, whether the Agreement of Sale was a good. Agreement of Sale entitling the appellant for specific performance on the basis of that agreement is essentially a question to be decided subsequently in the suit (though the suit is earlier to the suit filed by the first respondent). Under such circumstances there was a cloud on the property and a person like appellant who had the obligation qua the property in the shape of an Agreement of Sale could not be held to be an utter outsider having no locus standi to take the objections.

16. When Order XXI Rule 58 is read in conjunction with Rule 59 it would indicate that the property attached which had been advertised for sale empowers the Court to postpone such sale.

17. Order XXI Rule 92 empowers the Court to make an order confirming the sale where no application is made under Rule 89, 90 or 91 or application filed under these provisions have been dismissed. In other words the doors are kept open to raise objections till the last moment before confirming the sale. If an aggrieved party were to lodge a claim to the property attached claiming any right over such attached property it requires to be adjudicated since the sale has not yet become absolute.

18. Now turning my attention to the facts on hand it is noticed that when Court sale was to be conducted on 08.12.1995 KSFC had filed objections inter alia contending that it had charge over the property attached and admittedly sale was not held on said date and sale came to be postponed. In other words sale was not concluded and confirmation of sale was yet to take place. In that view of the matter the applications filed by KSFC cannot be construed as being barred under clause (a) of proviso to sub-rule (1) of Rule 58 of Order XXI. Hence, substantial question of law No. 1 formulated herein above is to be answered by holding that in the instant case the sale was not concluded and as such the embargo placed under clause (a) of proviso to sub-rule (1) of Rule 58 of Order XXI was not attracted to the facts on hand. In view of the fact that KSFC has first charge over the property its claim under Order XXI Rule 58 was maintainable and the lower appellate Court has rightly allowed the said application by allowing the appeal and setting aside the order of the trial Court dated 23.02.2004 passed in E.P. 127/1995.

RE: QUESTION NO. (ii):

19. A perusal of sub-rule (5) would indicate that where a claim or objection is preferred and the Court, under proviso to sub-rule (1) refuses to entertain such claim or objection then such party against whom such order is made would be at liberty to establish his right which he claims to the property in dispute by filing a suit. Sub-rule (2) of Rule 58 mandates that all questions relating to right, title and interest in the property attached arising between the parties are required to be adjudicated which provision is akin to erstwhile Rule 63 of Order XXI. On a decision rendered under Order XXI Rule 58 was subject to a suit that may be instituted under Rule 63. The result of such suit if any could alone cause affectation to the otherwise conclusive order passed under Order XXI Rule (sic) An order passed under Order XXI, Rule 58 simpliciter, unless it could also fall within ambit of Section 47 was not appealable as it neither came within the ambit of a decree as defined in Section 2(2) of CPC nor of an order appealable u/s 104 nor even order XLIII Rule 1. This was the settled position. Under the old unamended provision of order XXI Rule 58 the executing Court was required to merely investigate the claim or objection in a summary manner. However, under the new amended provision it has to now adjudicate upon the claim or objection with regard to right, title and interest. The amendment not merely confines to third parties but has been made applicable to all the claims or objectors whether they are parties to the original suit or not or their representatives. Further such

claim preferred or objection made is to be decided in accordance with the provisions contained in the rule itself. The said rule when read along with succeeding Rule 59 provides as a self contained code for determination of all questions including questions relating to right, title, interest of a property attached. It is significantly noticed that Rules 59-63 of Order XXI as of old have been deleted and some particulars thereof, with necessary modifications have found way in Rule 58 and 59 and others have been given a go by. It is to be noticed that right to institute a suit under Order XXI Rule 63 have been taken away. Yet an in built mechanism is provided to seek relief as could be seen from the plain reading of sub-rule (2) and sub-rule (4) and same are extracted herein below:

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

20. A purposeful reading conjointly of all the provisions above referred to would lead to the conclusion that all claims to property or objections to attachment of any property, attached in execution of a decree on the ground such property is not liable to attachment, whether preferred by the parties to the suit or their representatives, or third parties or to be adjudicated under Order XXI Rule 58 if entertained by the Court and all questions relating; to right, title or interest in the property attached raised by such parties therein under this rule are required to be determined by the Court dealing with the claim or objection and not by a separate suit.

21. Further the order made on such determination will have the same force as if it were a decree as defined u/s 2(2) of C.P.C. but not being a decree itself. Further more the order is subject to same conditions as to appeal or otherwise as if it were a decree without a decree itself. Since the order is appealable as specifically provided under sub-rule (4) it necessarily follows that it is conditioned in the way and manner as provided u/s 96 of the Code under which original decrees are made appealable. This is to say that ordinarily the order is appealable, even if it is passed *ex parte* vide Section 96(2) of C.P.C. It is otherwise not appealable if it is passed by consent of the parties vide Section 96(3) of C.P.C.

22. If the claim or objection results in rejection simpliciter the party against whom such order is made will have to take recourse by filing a suit as prescribed under sub-rule (5) of Rule 58. However, if the claim or objection is examined with reference to pleading and proof, evidence then, necessarily it would attract

sub-rule (4) of Rule 58 and as such the legislature in its wisdom have not considered this matter lightly so as not to provide thereof an appellate jurisdiction. If a situation is visualised that all claims or objections considered and adjudicated by a Court the avenue of appeal is not available under sub-rule (4) of Rule 58 thus it would become redundant and this conclusion alone can be drawn since no one would prefer or file a claim or objection and receive an adverse order without having the remedy of appeal.

23. Thus, a Court dealing an objection or claim over the property under attachment has two options left to it namely; either it can reject such claim or objection at the threshold as provided under proviso to sub-rule (1) or determine such questions under sub-rule (2) of Rule 58. If the Court declines to entertain the claim under proviso to sub-rule (1) the remedy to such a party against whom such an order is passed is to institute a suit as provided under sub-rule (5). On the other hand if the dispute is adjudicated under sub-rule (2) such an order amounts to a decree and can be challenged by a party by taking recourse to Section 96 by filing an appeal. A perusal of sub-rule (4) of Rule 58 clearly reveals that where claim or objection has been adjudicated upon the order made thereon it shall have the same force and be subject to same conditions as to appeal or otherwise as if it were a decree. Order XXI Rule 58(4) by its. If declares the order made under order XXI Rule 58 would amount to a decree and subject to conditions and as such it would be an appealable order. In this context the Judgment of High Court of Andhra Pradesh in the case of Bollapalli Venkat Rao Vs. Chaturvedula Subbaiah and Another, is extracted to support my view.

11. It may be useful to refer in this connection that Section 2(2) of the Civil P.C. before its amendment by Act 104 of 1976 included in its enlarged definition the determination of any question within Sec. 47 and the said reference to S. 47 was omitted by the Amending Act. Now the right of appeal in execution matters is taken away. As per the said unamended definition without any specific right of appeal being conferred, Courts entertained appeals, and further appeals in respect of matters determined under Sec. 47 as they were declared to be decrees within the meaning of Section 2(2), Civil P.C. The amended provision of Order 21, Rule 58, Civil P.C. besides adopting the tenor of Section 47 in sub-rule (2), besides declaring such adjudicating orders as decrees also declared the incident or right of appeal shall be attached to it. The only omission is that the further right of appeal was not declared. In view of the established legal position, it is unnecessary for the Legislature to specifically confer such further right of appeal. The view of ours is supported not only as per the construction of the said provision both on principle and on the authority but also as per the objects and reasons assigned by the Parliament while introducing the Bill for amending the Code by Act 104 of 1976. The statement and objects of Clause 75 of the Bill reads as follows:-

Clause 75-Sub-clause (XXV)-Rules 58 to 63 deal with claims and objections in execution. At present the adjudication in execution has limited scope and the

matter can be further agitated by way of a regular suit. In order to prevent protraction of litigation, it is thought desirable to have all questions (including questions of title) settled finally in execution proceedings itself. This would be in keeping with the tenor of S. 47 wherein it is provided that all questions arising between parties to the suit relating to the execution, discharge and satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Rules 58 to 63 are being substituted accordingly.

Further the present provision was introduced as per the 14th, 27th and 44th reports of the Law Commission. In 27th Report, the Law Commission, India suggested in Appendix I the proposal to introduce a draft amendment to Order 21, Rule 58 which is enacted without any modification. Reason for the said proposal was also given at page 198 of the above report. It was stated that under the new scheme as proposed full enquiry into title will be held and suit will be barred under the changed scheme. They also observed at page 198 that since orders under Order 21, Rule 58, C.P.C. will now be appealable as decrees the appeal shall attract full Court fee and for the purpose of Court fee these orders should be treated as orders under S. 47. Thus the intention of the Legislature starting from its preparation of the bill and adopting the change suggested by the Law Commission verbatim would clearly indicate that the provision of Order 21, Rule 58, C.P.C. must be an exhaustive remedy as a suit and the orders passed thereon must be treated as decrees without restricting any rights of appeal. We are clearly of the opinion that in the absence of any prohibition for further appeal embodied in Order 21, Rule 58, C.P.C. the party to the proceedings under Order 21, Rule 58, C.P.C. is clearly entitled to the further appeal under the Code viz., the second appeal.

A decision of the Co-ordinate Bench of this Court in the case of B.K. Krishna Murthy and Others Vs. G.P. Rao and Another, also can be looked up which supports the view taken by me:

4. I have applied xxx substance. No doubt, as provided by Order XXI Rule 58 (4) in adjudication of the claim or objection under this rule, an order made thereon adjudicating the claim, no doubt it has been provided that the same will have force as decree and it shall be subject to right of appeal. But here the question is whether the claim that has been made by the revision petitioner under Order XXI Rule 58 has been adjudicated upon. In my opinion the order impugned has not adjudicated the claim of independent right, title to which the revision petitioners have claimed with respect to the property attached under Order XXI Rule 58. The Court has simply said that the objection itself is not maintainable xxx decided. A decision made under Order XXI Rule 58 deciding on merit the claim under Order XXI Rule 58 without considering the merits of the claim cannot amount to a decree and clause (4) of Rule 58 may not be applicable to such a case.

Thus above dicta would indicate that if it is an order which comes within the four corners of sub-rule (4) then it would amount to a decree and thus appealable. It has been further held in the said judgment as under:

6. In this view xxx intention. No doubt, after the claim has been adjudicated and order has been passed under Rule 58, that order as provided under sub-rule (4) will amount to a decree and will have the same force as of decree and will be always appealable to Court by way of appeal from decree u/s 96 of C.P.C. as an appeal from decree.

Thus order made under Order XXI Rule 58(4) despite having value of a decree, is still an order, which is appealable as provided therein and the appellate Court can examine the said appeal. In view of the same, I am of the considered view that the appeal filed by the third respondent herein before the District Court in R.A. 8/2004 was competent and maintainable and as such substantial question of law No. (ii) and (iii) formulated hereinabove is answered by concluding that said appeal was maintainable and lower Appellate Court was justified in allowing the application filed under Order XXI Rule 58 by allowing the appeal R.A 8/2004.

Hence, the following order:

ORDER

1. Second Appeal is hereby dismissed by answering the substantial question of law in favour of third respondent-KSFC and against the appellant as discussed herein above.
2. Judgment and Decree passed in R.A. 8/2004 dated 15.01.2004 is hereby affirmed.
3. Parties to bear their respective costs.