
(1969) 08 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Ex. First Appeal No. 327 of 1969

Tara Chand Dwarka Dass Aggarwal and Another	APPELLANT
Vs	
Badri Parshad Incha Ram	RESPONDENT

Date of Decision : 22-08-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 63

Citation : AIR 1971 P&H 79

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Advocate : A.L. Bahri, for the Appellant; S.P. Jain, for the Respondent

Judgement

1. The facts giving rise to this Execution First Appeal are these -
2. On the basis of Hundies, Badri Parshad and Shrimati Lachhmi Devi obtained two money decrees against Tara Chand. In execution of those decrees, certain properties were attached by the decree-holders. Promod Kumar and others filed objections under O. 21, R. 58, Code of Civil Procedure, alleging that the properties could not be attached, because they had, before their attachment, fallen to their shares due to family partition. Those objections were accepted by the executing Court. Thereupon, the decree-holders filed suits under O. 21, R. 63, Code of Civil Procedure, saying that the properties in reality belonged to the judgment-debtor, Tara Chand, and were liable to sale in execution of their decrees. The suits were decreed, after contest by the judgment-debtor, his sons and certain transferees. Thereafter, the decree-holders filed applications praying that the properties be sold in execution of their decrees. Thereupon, the judgment-debtor and Promod Kumar again filed an objection petition under O. 21, R. 57 and Sections 47 and 151, code of Civil Procedure. Their main grievance was that the properties attached had been released and, therefore, they should be again attached before they were sold. The said objection petition was dismissed by the Court below and against that order, the present Execution First Appeal has been filed by the judgment-debtor.

3. It was contended by the learned counsel for the appellant that after the objections under O. 21, R. 58 Code of Civil Procedure, were accepted by the executing court, the counsel for the decree-holder made a statement to the effect that since the said objections had been allowed, he did not wish to proceed with the execution application and he would file a new one if need be. The Court, thereupon, ordered that in view of the statement made by the decree-holder's counsel, the execution application be dismissed as unsatisfied. After the dismissal of the execution application in this manner, so argued the counsel, the attachment came to an end and the properties were released therefrom. They had to be attached again, before they could be sold.

4. The present objection petition, as I have already said, was made under O. 21, R. 57, Code of Civil Procedure. The said rule says-

"Determination of attachment: Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adorn the proceedings to a future date, Upon the dismissal of such application the attachment shall cease."

5. This rule would obviously not apply to the facts of the present case, because it was not by reason of any default on the part of the decree-holder that the executing Court was unable to proceed further with the execution application. Consequently, the attachment of the properties could not cease under this rule.

6. The objections filed under O. 21, R. 58, CPC having been accepted, the properties could be released from attachment under O. 21, R. 60, Code of Civil Procedure. The order passed under the provisions of O. 21, R. 58, Code of Civil Procedure, would be sought to the decision of a regular suit under O. 21, R. 63. What would happen to the attachment of the properties, if, subsequently the aggrieved party filed a suit under O. 21, R. 63 and succeeded therein? This precise question has been answered by a Division Bench of the Calcutta High Court in Protap Chandra Gope and Others Vs. Sarat Chandra Gangopadhyaya, . In that authority, Sir Asutosh Mukherjee, the acting Chief Justice, speaking for the Court observed -

"No doubt the effect of an order under O. 21, R. 60 allowing a claim, is to make it obligatory on the Court to release the property from attachment; but the order of release is only provisional and is liable to be set aside by a regular suit, as expressly stated in Rule 63; * * * * * it has been held that the order for release from attachment does not put an end to the attachment so as to leave the claimant free to deal with the property as he likes; if a suit is brought by the decree-holder to establish his right to attach the property and a decree is passed in his favour, the effect of the decree is to set aside the order of release and to maintain uninterrupted the attachment originally made."

7. Similarly, a Division Bench of the Madras High Court in Anthaya Hegade and Another Vs. Manjaiya Shetty, , held-

"The release from attachment on the claim to the attached property being allowed is only provisional in character and is subject to the result of the suit which is allowed to be brought by the Code to contest the order allowing the claim and if the suit succeeds, the attachment is revived from the beginning."

8. In *Mt. Anandei v. Lal Ram* AIR 1939 Oudh 178, it was remarked-

"The order for release from attachment in a case under O. 21 R. 58 does not put an end to the attachment so as to leave the claimant free to deal with the property as he likes and if a suit is brought by the decree-holder under O. 21, R. 63 to establish a right to attach the property and a decree is passed in his favour, the effect of the decree is to set aside the order of release and to maintain uninterrupted the attachment originally made. the result is that any private transfer of property by the claimant, though made after an order releasing the property from attachment, will be void u/s 64, if the right to attaches subsequently established by suit under R.63."

9. Following these authorities, I would hold that the Court below had rightly dismissed the objection petition filed by the judgment-debtor. Consequently, the appeal fails and is dismissed with costs.

10. Appeal dismissed.