

(1978) 04 MAD CK 0005

In the Madras High Court

Case No : Civil Revision Petition No. 3394 of 1975

Union of India

APPELLANT

Vs

Ganesh Lal Bajaj and Others

RESPONDENT

Date of Decision : 04-04-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, Order 21 Rule 59, 151, 47

Citation : (1978) 115 ITR 791

Hon'ble Judges : Suryanmurthy, J

Bench : Single Bench

Judgement

Suryanmurthy, J.—This is a civil revise petition against a judgment of the learned Additional Subordinate Judge of Vellore, dismissing E.A.

No. 210 of 1975 in E.P. No. 96 of 1974 in O.S. No. 3288 of 1969 on the file of the City Civil Court, Madras.

2. The application before the learned subordinate judge was filed by the Union of India, Income Tax Department, represented by its TRO VI,

Madras, for a declaration that the attachment of the properties of the judgment-debtor by M/s. Ganesh Bajaj, the first respondent, is void and for

raising the attachment. The officer also prayed for stay of the execution proceedings .

3. ""When a certificate has been received by the Tax Recovery Officer from the Income Tax Officer for the recovery of arrears under this

Schedule, the Tax Recovery Officer shall cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the

certificate within fifteen days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under

this Schedule."" Rule 16(1) provides that where a notice has been served on a

defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the TRO, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

4. The learned counsel for the first respondent wants me to read the words ""such property"" in rule 16(1) to mean a property mortgaged, charged, leased or otherwise dealt, with by the owner on whom a notice under rule 2 had been served. Such an interpretation would be meaningless and will have startling results. If the defaulter is not competent to mortgage, charge, lease or otherwise deal with any property, the question of his creating such an encumbrance or dealing with the property in such a manner, will not arise at all. Therefore, the jurisdiction of the civil court to issue any process against the property not thus encumbered will not be taken away. Then the rule will have no meaning. As I read the rule, the civil court in deprived of the jurisdiction to issue any process against any property of a defaulter in execution of a decree for payment of money after a notice is served on the defaulter under rule 2.

5. In the instant case, the demand notice was served on May 15, 1968, and an attachment also was effected by the Income Tax department on April 11, 1969. The properties in dispute were sold on October 8, 1969, by the Tahsildar. However, the sale was set aside on April 17, 1970, because of certain irregularities in the conduct of the sale and not because the tax due was paid.

6. The learned counsel for the first respondent contends that when the sale was set aside on April 17, 1970, the attachment effected by the department had also been lifted by virtue of the sale being set aside. I am unable to accept this contention. The setting aside of the sale has not the effect of vacating the attachment effected by the department. In any event, by reason so sun-r. (1) of r. 16, the question whether an attachment was subsisting or into is also irrelevant for the purpose of deciding this case, because the mere issue of a demand notice under r. 2 is sufficient to deprive the court of the power of issuing any process against the property of a defaulter. The decree-holders attachment was on July 20, 1969, that is to say, long after the demand notice under r. 2 and the attachment by the

department. The suit was decreed on August 23, 1971. On that date the attachment was made absolute. In pursuance of this attachment, the decree-holder after the notice dated May 15, 1968, under r. 2 issued by the Income Tax department is void. The effect of r. 16 of Sch. II of the I.T. Act of 1961 is not lost by virtue of the sale being set aside.

7. The learned subordinate judge has gone into the question whether this application is maintainable under s. 47 of the CPC or under Order 21, R. 58 and 59 of the Code of Civil Procedure. That question need not be gone into, because the application has been filed under s. 151 of the Code of Civil Procedure. As soon as the notice under r. 16 of Sch. II brought to the notice of the learned subordinate judge, he ought to have stopped proceeding further with the execution of the decree. In the circumstances, this civil revision petition is allowed and the attachment by the first respondent in pursuance of the decree in his favour which was made absolute on August 23, 1961, is set aside and the execution proceedings instituted by him are stayed. After the department realises the dues, the decree-holder may proceed with the execution. No costs.