The Union Of India vs Hira Devi And Another on 21 May, 1952

Equivalent citations: 1952 AIR 227, 1952 SCR 765, AIR 1952 SUPREME COURT 227, 1990 CALLJ 95 1965 MADLW 628, 1965 MADLW 628

Author: N. Chandrasekhara Aiyar

Bench: N. Chandrasekhara Aiyar, Mehr Chand Mahajan, Vivian Bose

PETITIONER:
THE UNION OF INDIA

Vs.

RESPONDENT:
HIRA DEVI AND ANOTHER.

DATE OF JUDGMENT:
21/05/1952

BENCH:
AIYAR, N. CHANDRASEKHARA
BENCH:
AIYAR, N. CHANDRASEKHARA
MAHAJAN, MEHR CHAND
BOSE, VIVIAN

CITATION:
1952 AIR 227 1952 SCR 765

ACT:
Civil Procedure Code, 1908, s. 60 (k)--Provident Funds Act (XIX of 1925), ss. 2 (a), 3 (1)--Compulsory deposit in Provident Fund--Exemption from attachment--Appointment of receiver-Legality.

HEADNOTE:
A receiver cannot be appointed in execution of a decree in respect of a compulsory deposit in a Provident Fund due to the judgment debtor. Whatever doubts may have existed under the earlier Act of 1897, the definition of "compulsory deposit" in s. 2 (a) of the Provident Funds Act (XlX of 1925) clearly includes deposits remaining to the credit of the subscriber or depositor after he has retired from service.

Arrears of salary and allowances stand upon a different footing and are not exempt from being proceeded against in

execution.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 132 of 1951.

Appeal by Special Leave from the Judgment and Decree dated 17th May, 1950, of the High Court of Judicature at Calcutta (Harries C.J. and Sinha J.) in Appeal No. 41 of 1950 arising out of the Order of Banerjee J. dated 19th December, 1949, in Suit No. 132 of 1948.

M.C. Setalvad, Attorney-General for India (B. Sen, with him) for the appellant.

Naziruddin Ahmad (Nuruddin Ahmad, with him) or respond- ent No. 1.

S.N. Mukherjee for respondent No.2 1952. May 21. The Judgment of the Court was delivered by CHANDRASEKHARA AIYAR J.--This Court granted special leave to appeal in this case on the Government agreeing to pay the costs of the respondents in respect of the appeal in any event.

The decree-holder was a lady named Hira Devi. The judg- ment-debtor was one Ram Grahit Singh, who retired on 31st January, "1'947, as a Head Clerk in the Dead Letter Office, Calcutta. A money decree was obtained against him on 30th July, 1948. On 1st February, 1949, a receiver was appointed for collecting the moneys standing to the credit of the judgment-debtor in a Provident Fund with the Postal authori- ties. The Union of India intervened with an application dated 20th September, 1949, for setting aside the order appointing the receiver.

Mr. Justice Banerjee dismissed the application of the Union of India, holding that a receiver could be appointed for collecting the Fund. On appeal, Trevor Harries C.J. and Sinha J. upheld his view.

From the facts stated in the petition filed by the Union of India before the High Court, it appears that a sum of Rs. 1,394-13-1 represents arrears of pay and allowances .due to the judgment-debtor and a sum Of Rs. 1,563, is the compulso- ry deposit in his Provident Fund account. Different consid- erations will apply to the two sums, though in the lower court the parties seem to have proceeded on the footing that the entire sum was a "compulsory deposit" within the meaning of the provident Funds Act, 1925.

The main question to be decided. is whether a receiver can be appointed in execution in respect of provident Fund money due to the judgment-debtor.

Compulsory deposit and other sums in or derived from any fund to which the Provident Funds Act XIX of 1925 applies are exempt from attachment and sale under section 60 (k), Civil Procedure Code.

> "Compulsory deposit" is thus defined in section 2 (a) of the Provident Funds Act XIX of 1925:--
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> Compulsory deposit means a subscription to, or deposit in a Provident Fund which under the rules of the Fund, is not, until the happening of some specified contingency repayable on demand otherwise than for the purpose of the payment of premia in respect of a policy of life insurance (or the Payment Of subscriptions or premia in respect of a family pension fund), and includes any contribution and any interest or increment which has accrued under the rules of the fund on any such subscription, deposit, contribution, and also any such subscription, deposit, contribution, interest or increment remaining to the credit of the sub- scriber or depositor after the happening of any such contin- gency."

Such a deposit cannot be assigned or charged and is not liable to any attachment. Section 3 (1)of the said Act provides :--

> 3. (1)" A compulsory deposit in any Government or Rail-

way Provident Fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any Civil, Revenue or Criminal Court in respect of any debt or liability incurred by the subscriber or depositor, and neither the Official Assignee nor any receiver appointed under the Provincial Insolvency Act, 1920 shall be entitled to, or have any claim on any such compulsory deposit."

It is obvious that the prohibition against the assign- ment or the attachment of such compulsory deposits is based on grounds of public policy. Where the interdiction is absolute, to allow a judgment creditor to get at the fund indirectly by means of the appointment of a receiver would be to circumvent the statute. That such a frustration of the very object of the legislation should not be permitted was laid down by the Court of Appeal as early as 1886 in the case of Lucas v. Harris (1), where the question arose with reference to a pension payable to two officers of Her Majesty's Indian Army. Section 141 of the Army Act, 1881 provided:

> "Every assignment of, and every charge on, and every agreement to assign or charge any ..... pension pay- able to any officer or soldier of Her Majesty's forces, or any pension payable to any such officer ..... or to any person in respect of any military service, shall except so far as the same is made in pursuance of a royal warrant for the benefit of the family of the person entitled thereto, or as may be authorised by any Act lot the time being in force, be void.
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> In that case, the appointment of a receiver to collect the pension was in question. Lindley, L.J., observed:-
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> In considering whether a receiver of a retired officer's pension ought to be appointed, not only the language but the object of section 141 of the Army Act. 1881 must be

> looked to; and the object of the section would, in my opinion, be defeated, and not advanced, if a receiver were appointed."

Lord Justice Lopes reiterated the same thing in these words :-

> "It is beyond dispute that the object of the legislature was to secure for officers who had served their country, a provision which would keep them from want and would enable them to retain a respectable social position. i do not see how this object could be effected unless those pensions were made absolutely inalienable. preventing not only the person himself assigning his interest in the pension. but also preventing the pension being seized or attached under a garnishee order, or by an execution or other process of law. Unless protection is given to this extent the object which the legislature had in view is frustrated, and a strange anomaly would exist. A person with a (1) 18 (Q.B D. 127.

pension would not be able to utilise his pension to pay a debt beforehand, but immediately his creditor had obtained judgment might be deprived of his pension by attachment, equitable execution, or some other legal process. It is impossible to suppose that the legislature could have intended such an anomaly."

Section 51 of the Civil Procedure Code no doubt recognises five modes of execution of a decree and one of them is the appointment of a receiver. Instead of executing the decree by attachment and sale, the Court may appoint a receiver but this can only be in a case where a receiver can be appointed. The Provident Fund money is exempt from at- tachment and is inalienable. Normally, no execution can lie against such a sum.

The learned Judges in the Court below rested their view on the authority of the decision of the Privy Council in Rajindra Narain Singh v. Sundara Bibi(1). This decision has caused all the difficulty and has created a current of thought that even though the property may not itself be liable to attachment, a receiver can be appointed to take possession of the same and to apply the income or proceeds in a particular manner including the payment of the debts of the judgment-debtor. It is necessary. therefore, to examine the facts of the case carefully and find out whether the proposition sought to be deduced from it can be justified as a principle of general application apart from the particular circumstances. The original decision of the Allahabad High Court from which the appeal was taken before the Judicial Committee is reported in Sundar Bibi v. Raj Indranarain Singh(2). In a suit between two brothers, there was a com- promise to the effect that the Judgment-debtor shall possess and enjoy the immoveable properties mentioned in the list and estimated to yield a net profit of Rs. 8,000 a year without power of transfer during the lifetime of his broth- er, Lal Bahadur Singh, he undertaking to pay certain public exactions and other dues (1)1925) 52 I.A. 262. (2) (1921)43 All. 617 to his brother, Lal Bahadur Singh, amounting in all to Rs. 7,870-11-6, in four equal instalments per annum, each to be paid a month before the Government revenue falls due. The arrangement was stated to be "in lieu of his mainte- nance". When the judgment debtor's interest in the proper- ties was sought to be attached and sold, he raised the objection that they were exempt from attachment and sale by reason of clause (n) of Section 60 of the Code which speaks of "a right

to future maintenance". The High Court held that the words employed in sub-clause (n) contemplated R bare right of maintenance and nothing more--a right enforce- able by law and payable in the future--and that inasmuch as in the case before them the properties had been assigned to the judgment-debtor in lieu of his maintenance, it was not such a right, which alone was exempt from attachment and sate. They thought that it was a fit case for the appoint- ment of a receiver and remitted the execution petition to the subordinate judge for the appointment of a receiver after determining the allowance payable to the judgment- debtor for his maintenance.

With this conclusion of the High Court the Judicial Committee concurred. But they also expressed the view that they did not agree with the High Court on the subject of the actual legal position of the right of maintenance conferred upon the judgment-debtor. Taking the prayer of the judgment creditor to be that the right of maintenance be proceeded against, their Lordships observed that the right was in point of law not attachable and not saleable. If it was an assignment of properties for maintenance, the amount of which was not fixed, it was open to the judgment-creditor to get a receiver appointed subject to the condition that whatever may remain after making provision for the maintenance of the judgment-debtor should be made available for the satisfaction of the decree debt. The right to main- tenance could not be attached or sold. In so far as the decree-holder sought to attach this right and deprive the judgment-debtor of, his maintenance, he was not entitled to do so, but where his application for the appointment of a receiver was more comprehensive and sought to get at any remaining income after satisfying the maintenance claim, the appointment of a receiver for the purpose was justified. The decision of the Privy Council does not appear to lay down anything beyond this. In our opinion, it is not an authority for the general proposition that even though there is a statutory prohibition against attachment and alienation of a particular species of property, it can be reached by another mode of execution, viz., the appointment of a re- ceiver. On the other hand, it was pointed out in the case of Nawab Bahadur of Murshidabad v. Karnani Industrial Bank Limited(1) that as the Nawab had a disposing power over the rents and profits assigned to him for the maintenance of his title and dignity without any power of alienation of the properties, no question of public policy arose and that a receiver of the rents and profits was rightly appointed. This line of reasoning indicates clearly that in cases where there is no disposing power and the statute imposes an absolute bar on alienation or attachment on grounds of public policy, execution should not be levied. Understood as mentioned above, Rajindra Narain Singh's case creates no difficulty. We shall now refer to the decisions that followed or distinguished the same. In The Secretary of State for India in Council v. Bai Somi and Another(2), the maintenance of Rs. 96 per annum was made under a compromise decree a charge on the house which was to belong to the defendant. 'the court-fee due to Government was sought to be recovered by attachment of the house. The right to attach was negatived; the house could not be at- tached as it belonged to the defendant; and the plaintiff's right to maintenance could not be attached under section 60, clause (1). In dealing with a prayer made by the Govern- ment for the first time in the High Court for an order appointing a receiver of the plaintiff's maintenance, Beaumont C.J. and (1) (1931) 58 I.A. 215. (2) (1933) 57 Bom. 507.

another learned Judge held that even this could not be done. The Chief Justice said ,'If these exempted payments can be reached in execution by the appointment of a receiver by way of equitable execution, the protection afforded by the section is to a great extent lost." They steered

clear of Rajindra Narain Singh's case by stating that there was in the judgment of the Board no clear expression of opinion and there was doubt whether the allowance then in question was maintenance or not. The Madras High Court in The Secre- tary of State for India in Council v. Sarvepalli Venkata Lakshmamma(1) has dealt with a question similar to the one in The Secretary of State for India in Council v. Bai Somi and Another(2) but it merely referred to the ruling in Rajindra Narain Singh's case without dealing with the facts or the reasoning. It throws no light. The case in Janaki- nath v. Pramatha Nath (3) was a decision by a single Judge and stands on the same footing as the Madras case. There is nothing else on this subject in the judgment than the short observation, "the Provident Funds Act does not in my opinion prohibit the appointment of a receiver of the sum lying to the credit of the deceased in the Provident Fund." Possibly the view was taken that on the death of the employee and in the absence of any dependent or nominee becoming entitled to the fund under the rules, it became money payable to the heirs of the deceased and lost its original nature of being a compulsory deposit. The case of Dominion of India, repre- senting E. 1. Ry. Administration and Another v. Ashutosh Das and Others(4) refers no doubt to Rajindra Narain Singh's case but does not discuss it in any detail. Roxburgh J. merely states "surely it is an improper use of that equita- ble remedy to employ it to avoid a very definite bar created by statute law to achieving the very object for which the receiver is appointed." The decision in Ramprasad v. Moti- ram(5) related to the attachment and sale in execution of a (1) (1926) 49 Mad; 567. (4) (1950) 54 C.W.N. 254. (2) (1933) 57 Bom. 507. (5) (1946) 25 Pat. 705. (3) (1940) 44 C.W.N. 266.

money decree of the interest of a khoposhdar in a khorposh grant which was heritable and transferable. It affords us no assistance.

The learned counsel for the respondents relied on three decisions of the Privy Council as lending him support. One is Nawab Bahadur of Murshidabad's case(1) already referred to. Vibhudapriya Thirtha Swamiar v. Lakshmindra Thirtha Swamiar(2) and Niladri Sahu v. Mahant Chaturbhuj Das and Others(3) are the other two eases and they relate to maths and alienations by way of mortgage of endowed properties by the respective mahants for alleged necessity of the institu- tions. They bear no analogy to the present ease. The mahants had a beneficial interest in the properties after being provided with maintenance. A receiver could be ap- pointed in respect of such beneficial interest so that the decrees obtained may be satisfied.

With great respect to the learned Judges of the Court below, we are of the opinion that execution cannot be sought against the Provident Fund money by way of appointment of a receiver.

This conclusion does not, however, apply to the arrears of salary and allowance due to the judgment-debtor as they stand upon a different legal footing.Salary is not attach- able to the extent provided in Section 60, clause (1), Civil Procedure Code, but there is no such exemption as regards arrears of salary. The learned Attorney-General conceded that this portion of the amount can be proceeded against in execution.

The Provident Fund amount was not paid to the subscriber after the date of his retirement in January 1947. This, however, does not make it any the less a compulsory deposit within the meaning of the Act. Whatever doubt may have existed under the earlier Act of 1897 the decisions cited for the

respondent, Miller v. B.B. & C.I. Railway(4) and Raj (1) (1931) 58 I.A. 215. (3) (1926) 53 I.A. 253. (2) (1927) 54 I.A. 228. (4) (1903) 5 Bom. L.R. 454.

Kumar Mukharjee v. W.G. Godfrey(1) are under that Act, the meaning has now been made clear by the definition in section 2 of the present Act; any deposit "remaining to the credit of the subscriber or depositor after the happening of any such contingency" is also a compulsory deposit; and the contingency may be retirement from service. In the result, the appeal is allowed and the order of the lower court dated 1st February, 1949, appointing a receiver is set aside as regards the Provident Fund amount of Rs. 1,563 lying to the credit of the judgment-debtor. Under the condition granting special leave, the Government will pay the 1st respondent's costs of this appeal. Appeal allowed.

Agent for the appellant: P.A. Mehta.

Agent for the respondent No. 1: Naunit Lal. Agent for the respondent No. 2: P.K. Chatterjee. (1) A,I.R. 1922 Cal. 196,