

Sheo Dhari Pandey vs Nand Kumar Pandey on 24 April, 1950

Equivalent citations: AIR1950ALL699, AIR 1950 ALLAHABAD 699

JUDGMENT

Agarwala, J.

1. This is an appeal against an order passed by the lower appellate Court setting aside the order of the Munsif who had rejected an application made under Section 145, Civil P. C. Certain crops belonging to the judgment debtor-respondent were attached in execution of a decree against him and were entrusted to the care of the appellant who executed a surety bond which was accepted by the Court. Subsequently the judgment-debtor satisfied the decree by payment of the decretal amount and the execution case was struck off. The appellant, Supurdar, did not, however, return the attached crops to the judgment-debtor who thereupon applied for relief under Section 145, Civil P. C., against the appellant. The appellant objected that no application under Section 145, Civil P. C., could be made against him and the relief could be sought by a regular suit only. The trial Court accepted this contention and rejected the application.

2. The lower appellate Court, however, held that an application under Section 145, Civil P. C., lay. The appellant has, therefore, now come up in second appeal to this Court.

3. The question for determination is whether the appellant, Supurdar, was liable as a surety and relief against him could be sought by means of an application under Section 145, Civil P. C.

4. Order 30, Rules 41 and 45 provide for attachment of agricultural produce. Under Rule 15 the Court makes such arrangement for the custody of the attached property as it may deem sufficient. Under Section 122 of the same Order added by the Allahabad High Court, the attaching officer is directed subject to the approval of the Court to make such arrangement as may be most convenient and economical. Under Rule 123 the attaching officer is authorised, with the permission of the Court, to place one or more persons in charge of such property. As already stated, in the present case when the property was attached a security bond was taken from the appellant and the Court approved of the arrangement. The appellant, therefore, by executing a security bond rendered himself liable to the Court as a surety and in my opinion he could be proceeded against under Section 145, Civil P. C.

5. There is no doubt some apparent conflict of authority on the point. In *Kallu Khan v. Abdullah Khan*, 18A. L. J. 357: (A. I. R. (7) 1920 ALL. 245), Banerjee J. held that where the crops of the judgment debtor were attached and placed in charge of a person, the proper procedure was to bring a regular suit against such person. It does not appear that in that case the arrangement made by the Amin who attached the crops was approved of by the Court, nor does it appear that the person in whose charge the crops were placed executed any bond.

6. In *Badri Prasad v. Chokhelal*, 48 ALL. 510 : (A. I. R. (18) 1926 ALL. 406), the attaching officer took possession of the property which consisted of certain pieces of cloth and placed them in the safe custody of one Badri Prasad but without taking the permission of the Gourd to do so. It was held that the person who was liable to the judgment-debtor was the attaching officer and not Badri Prasad.

7. In *Nanhoon v. Mt. Gendiya*, 1935 A.L.J. 1000 : (A. I. R. (22) 1935 ALL. 768), Bennett J. held that a supurdar to whom attached crop was entrusted was not a surety within the meaning of Section 145, Civil P. C. The reason given by his Lordship was that the supurdar did not undertake any liability for the performance of the decree, nor was he liable as a surety for the restitution of property taken in execution of a decree, nor was he liable for the payment of money, etc. It does not appear from the judgment in that case that the supurdar had executed any bond, or that the arrangement had the approval of the Court.

8. In *Genda Mal v. Sukhdarshan Lal*, 1936 A. L. J. 736 : (A. I. R. (23) 1936 ALL. 555), a Division Bench of this Court consisting of Sulaiman C. J, and Bennet J. held that the supurdar was liable as a surety under Section 145, Civil P. C. In that case the supurdnama had been accepted by the Court. It was observed:

"A supurdar takes charge of the property as if it had belonged to the judgment-debtor and had been attached by the Court and had been entrusted to him for safe custody on the distinct understanding that he had to restore it or pay its price whenever called upon by the Court or the Court amin."

9. In *Jagat Narain v. Nizamuddin*, 1933 A. L. J. 679: (A. I. R. (20) 1933 ALL. 385), it was held that where Sahanas or watchmen were appointed by the attaching officer on his own responsibility they were not sureties within the meaning of Section 145.

10. In my opinion the law on the point may be stated as follows: Where property is entrusted by an attaching officer to a watchman from whom no bond is taken for the safe custody and safe return of the property attached and the arrangements not approved of by Court, the custodian is not responsible as a surety under Section 145, Civil P. C. When a bond is taken from the custodian which bond 13 approved of by the Court, the custodian renders himself liable as a surety under Section 145.

11. In the present case such a bond was taken and was approved of by the Court and the appellant became responsible to the Court as a surety.

12. The order of the Court below was perfectly correct. There is no force in this appeal and it is dismissed. As the other side does not appear I do not make any order about costs.

13. Leave to appeal under the Letters Patent is refused.