

Abdul Hamid And Ors. vs Mst. Asghari Begum on 3 November, 1952

Equivalent citations: AIR1953ALL173, AIR 1953 ALLAHABAD 173

JUDGMENT

Kaul, J.

1. This second appeal originally came up for hearing before a Division Bench consisting of Wanchoo and Bhargava JJ. For reasons to be stated presently they referred it to a Full Bench.

2. The facts so far as they are material are as follows :

In a suit brought by one Mt. Asghari Begum against Abdul Hamid and others some property belonging to the defendants was attached before judgment under Order 38, Rule 6, Civil P.C. The claim was ultimately decreed and Asghari Begum put in an application for execution of her decree. She prayed that the property attached before judgment be sold for satisfaction of her debt. This application was dismissed for default. Thereupon Asghari Begum put in another application for execution which was also dismissed in 1935. The last application for execution was made by her on the 30th April 1938 and therein the prayer for sale of the property attached before judgment was repeated. In due course the decree was transferred for execution to the Collector under Section 38, Civil P.C. At this stage the judgment-debtors preferred an objection to the execution of the decree under Section 47, Civil P.C. It was contended on their behalf that, inasmuch as, the two previous applications for execution had been dismissed for default of the decree-holder, the attachment which was effected before judgment ceased to subsist in view of the provisions of Order 21, Rule 57, Civil P.C. In reply, the decree-holder relied on the decision of this Court in -- 'Akhey Ram v. Basant Lal', 46 All 894 and contended that Order 21, Rule 57 did not apply to attachments effected before judgment. The objections were thrown but. Accordingly the judgment-debtor went in appeal before the Additional Civil Judge of Bulandshahr, but were unsuccessful. Hence this second appeal.

3. When the case came up for hearing before a Division Bench in this court, it was argued that the learned Judges who decided --'Akhey Ram's case', (46 All 894) had for the view taken by them relied on the decision of the Madras High Court in -- 'Venkatasubbiah v. Venkata Seshaiya', 42 Mad 1 which was subsequently overruled by the Full Bench decision of the same court in -- 'Meyappa Chettiar v. Chidambaram Chettiar', 47 Mad 483 (FB). It was further pointed out that there was a sharp cleavage of judicial opinion on this point. Our own Court and the High Courts of Calcutta and Patna had taken one view, while the view taken in 47 Mad 483 (FB) was followed in Bombay, Sind

and Nagpur. Thereupon the Division Bench referred this appeal to a Full Bench because (1) reliance in -- 'Akhey Ram's case' was placed on the decision of Madras High Court in -- 'Venkatasubbiah's case', 42 Mad 1 which was later overruled by a Full Bench decision of the same court; (2) there was difference of opinion among various High Courts on the true scope of Order 21, Rule 57 Civil P.C. and (3) the general importance of the question raised by the objectors.

4. It will be noticed that even at the time when the decision in -- 'Akhey Ram's case' (46 All 894) was given there was no unanimity of judicial opinion on the question raised in the present case. But a Division Bench of this court (Sulaiman and Kanhaiya Lal JJ.) on a consideration of the provisions of Order 21, Rule 57 Civil P.C. and of the various provisions contained in Order 38, Civil P.C. came to the conclusion that Order 21, Rule 57 did not apply to attachments effected before judgment, but that its operation was limited to attachments effected in execution of a decree. It is noteworthy that they came to this conclusion independently of the decisions of other Courts. It is true that having arrived at that conclusion on a consideration and careful examination of the provisions of the Code they further observed: "There are several cases in support of the view which we have taken", and then mentioned a number of cases including the case of -- 'Venkatasubbiah', 42 Mad 1 which was later overruled by a Full Bench of the same court.

5. The decision in -- 'Akhey Ram's case' (46 All 894) has been considered good law in this State for the last 28 years and unless there are strong reasons for us to hold that the view taken by the Division Bench in that case was wrong, we would not be justified in dissenting from that decision merely because some other High Courts have taken a different view.

6. To begin with, I find that there is no ambiguity either in the language of Order 21, Rule 57, Civil P.C. or in that of Order 38, Rule 11, Civil P.C. Accordingly the provisions of these rules should be given the meaning which their language would ordinarily bear. The expression "attachment in execution of decree" has a definite and well settled connotation. Under the scheme of our Code of Civil Procedure "Execution of decrees" is a definite stage in the process of litigation, well marked off from proceedings which terminate in the passing of a decree. The last mentioned relate to the determination of the rights of the parties, while the former is concerned with the enforcement of those rights after they have been (judicially determined. If the legislature in enacting Order 21, Rule 57, Civil P.C. used the expression "in execution of decree" which has a definite and well settled connotation, we should not in the absence of very strong reasons, extend the provisions of that rule to cover attachments effected before judgment, which is certainly not a proceeding in execution of decree. With the greatest respect I am unable to accept the view taken by some High Courts that the words "any property attached in execution of a decree" should be construed as meaning "where property has been in a state of attachment in execution." To put such a forced and artificial construction upon the plain language of the statute is wholly without justification.

7. it appears that the cases in which a view different from that taken by this court in -- 'Akhey Ram's case' (46 All 894) has been taken the essential difference between an attachment before judgment and one effected after the judgment is passed and the decree is put in execution, has been overlooked. It is true that in both cases the mode of effecting the attachment is the same. The claims of third parties to the property attached are to be investigated in the same manner, and in both an

alienation of the property attached whether by sale", gift or otherwise is ineffective against claims enforceable under the attachment. Nonetheless an attachment effected before judgment is different from one effected after judgment in execution of decree, not only in its origin but also in its purpose.

8. An attachment before judgment under Order 38, Rule 6, Civil P.C. is effected only if the Court is satisfied that the defendant with a view to prevent or delay the execution of any decree that might be passed against him, intends to remove his property from the jurisdiction of the Court in which the suit is pending, and having being given an opportunity to furnish security in such sum as may be specified in the order of the Court fails to do so. Obviously the purpose of such an attachment, is to prevent the party concerned with removing his property out of the jurisdiction of the Court in which a suit against him is pending. On the other hand the purpose of an attachment effected in execution of a decree is to put some property of the judgment-debtor in 'custodia legis' to prevent its alienation so that it might be sold or otherwise made available for satisfaction of an existing decree which is being executed. Thus there is an essential difference between the two kinds of attachment -- one effected before judgment and the other effected in execution of a decree. As pointed out in -- 'Shibnath Singh v. Saberuddin Ahmad', 56 Cal 416, Order 21, Rule 57, Civil P.C. was intended to provide a remedy for the grievance or inconvenience which is apt to arise, where, after an attachment in execution, the application for execution cannot further be proceeded with by reason of the decree-holder's default. As the decree-holder has been in default, the rule deprives him of the advantage which he could have derived on account of the attachment which was made on his application for execution of his decree. It is doubtful whether the Courts would be justified in penalising a party who got an attachment before judgment, not for some thing which he did during the progress of the suit before his decree was obtained, but for some default in prosecution of an execution application which he might make subsequently. The Code does not say so, and I do not think the Courts by giving an altogether artificial and extended meaning to the provisions of Order 21, Rule 57, Civil P.C. would be justified in introducing such a penal provision in our law of procedure.

9. I refrain from examining in detail all the grounds mentioned in the various judgments of the Madras High Court in 47 Mad 483, because in view of the plain and unambiguous language of order 21, Rule 57 and of Order 38, Rule 11, Civil P.C., there is hardly room for any speculation as to the intention of the legislature. I will, however, before bringing this judgment to a close say a few words about one of the grounds mentioned by Ramesam J. in his elaborate judgment in -- 'Meyappa Chettiar v, Chidambaram Chettiar', 47 Mad 483 in support of his view. His argument was that it would be inconsistent to apply Section 63, Civil P.C. and Article 11, Limitation Act, to attachments effected before judgment, as had been done in many cases, and to hold simultaneously that the provisions of Order 21, Rule 57, Civil P.C. do not apply to such attachments. He pointed out that in all these provisions the expression "in execution of decree" are used, and it is wholly without justification to hold that though Section 63, Civil P.C. and Article 11, Limitation Act apply to attachments effected before judgment, but provisions of Order 21, Rule 57, do not apply. I am not prepared in the present case to commit myself to the view that Article 11, Limitation Act necessarily applies to claims arising out of attachments before judgment. So far as the applicability of Section 63, Civil P.C. is concerned this can be fully supported in view of the provisions of Order 38, Rule 8, Civil P.C. In my opinion, there is no justification for putting a forced and artificial interpretation

upon the plain language of Order 21, Rule 57, Civil P.C. on the grounds mentioned by the learned Judge.

10. I am satisfied that there are no good grounds to hold that the view taken in --'Akhey Ram's case' (40 All 894) was erroneous. I would dismiss the appeal with costs.

Bind Basni Prasad, J.

11. I concur.

Shankar Saran, J.

12. I agree and have nothing to add.

BY THE COURT

13. The appeal is dismissed with costs.