

(1953) 12 AHC CK 0021

Allahabad High Court (Lucknow Bench)

Case No: Ex. D.A. No. 65 of 1946

Ram Lakhan

APPELLANT

Vs

Mirza Mahbub Hasan Beg and
Others

RESPONDENT

Date of Decision: Dec. 8, 1953

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 54, Order 39 Rule 1, 64

Citation: AIR 1954 All 422

Hon'ble Judges: Randhir Singh, J; Beg, J

Bench: Division Bench

Advocate: B.K. Dhaon and S.P. Avasthi, for the Appellant;

Final Decision: Allowed

Judgement

Randhir Singh, J.

This is an execution first appeal against the judgment and decree of the Civil Judge, Bahraich, dated 19th November, 1946.

2. It appears that a decree for costs and some money was obtained by respondents 1 to 4 against the respondent No. 5 on the 30th March, 1935. The decree-holders put their decree into execution on the 30th March, 1938. Some proceedings were taken but ultimately the execution application was ordered to be consigned to record room on the 15th October, 1938. A fresh application for execution was made on 1st May, 1941 and a prayer for realisation of the decretal amount by attachment and sale of a house of respondent No. 5 was made. During the pendency of this execution, an application was made on the 27th August, 1941 in which a prayer was made that the house "Sultan Manzil" of the judgment-debtor be attached under Order 39. Rule 1, Civil P. C. Reference was also made to Section 151 and Order 21, Rule 51 (54?), Civil P. C. in the heading given to the application dated 27th August, 1941. The Court passed an order in the following words:

"Issue a temporary injunction as prayed".

The injunction was then issued and it was served by a proclamation made on the 5th September, 1941. The execution application was ordered to be consigned to the record room on the 17th August, 1942 but it was mentioned in the order that the property shall remain under attachment. A third application for execution was made on the 20th August, 1942, and in this application also a prayer for the attachment and sale of "Sultan Manzil" was made. This application also proved infructuous and was ordered to be consigned to the record room on 30th January, 1943. Once again the order that the property shall remain under attachment was made when the application was ordered to be consigned to the record room. A fourth application for execution was made on the 3rd February, 1945 and this also was consigned to the record room on the 15th May, 1945. Subsequently the last application for execution was made on the 9th February, 1946 and a prayer was made that the decretal amount be realised by sale of the attached property.

It was in these proceedings that an objection was made by Ram Lakhan who had on the 3rd November, 1945 obtained a sale-deed in respect of "Sultan Manzil" from the judgment-debtor for a sum of Rs. 25,000/-. The main grounds taken up in the objection were that there had been no attachment of "Sultan Manzil" and as such it could not be sold in execution; secondly the entire proceedings of sale were irregular and lastly that the objector was a bona fide transferee for value without notice and as such the sale-deed in his favour was binding on the parties to the decree. A number of issues were framed by the learned Civil Judge before whom the execution proceedings were pending and they are detailed in the judgment.

3. The learned Civil Judge, after considering the proceedings which had been taken in the various execution applications, came to the conclusion that the order passed on the application dated the 27th August, 1941 was in effect an order of attachment and that there had been an attachment of the property. Any sale made by the judgment-debtor in favour of the objector, after this attachment, was therefore, invalid. It therefore, dismissed the objection made by the objector. The objector Ram Lakhan has now come up in appeal.

4. The crucial point which arises for determination in this appeal is whether or not there had been a valid attachment of the property acquired by the appellant on the 3rd November, 1945. We have examined the application dated 27th August, 1941 and the order passed by the execution Court on this application. It is on the file of execution case No. 52 of 1941. It has been observed by the learned Civil Judge that if an order of attachment is passed on an application in which the provisions of law have not been correctly narrated, the attachment would nevertheless be valid and he has relied on a ruling -- "Bishambar Nath v. Girdhari Lal", AIR 1919 Oudh 4 (A). In this reported case although an application was made under Order 39, Rule 1, Civil P. C. an attachment had been ordered and had been duly made, it was held that it was a valid attachment. In the present case neither an order of attachment was made

nor was an attachment effected in pursuance of any order of attachment. The order was for a temporary injunction and this order was executed. The order for a temporary injunction would not amount to an order for attachment nor would the service of the temporary injunction amount to an attachment. It would be difficult therefore, to agree with the view taken by the lower Court that the attachment of the property "Sultan Manzil" had been made at any time in any of the execution proceedings.

5. If no attachment had been made an order of the Court that the attachment will continue will not operate as an attachment or a continuance of an attachment. The subsequent orders passed in other execution applications would not, therefore, be of any material assistance to the decree-holders in establishing a valid attachment of the property.

6. The other point raised in the objection made by the appellant would not arise if there had been no attachment in this case. The execution Court evidently was under a misapprehension that the property had already been attached when it ordered the attachment to continue. The decree-holders also seem to have been misled by this order of the Court when they made the last application for execution in which they asked for a sale of the property only. The entire execution proceedings following the application for execution dated the 9th February, 1946 should, therefore, be set aside and the execution Court should be ordered to proceed afresh taking into consideration the views expressed above. As no valid attachment of the property has been made, it will be open to the execution Court to make the attachment and then proceed according to law.

7. The appeal is, therefore, allowed and all the proceedings in the execution Court including the order of the lower Court under appeal are set aside. The execution case shall be restored to its original number by the Court below which will proceed to execute the decree from the stage when the application for execution dated the 9th February, 1946 was made. We make no orders as to costs.