

(1969) 07 GAU CK 0004**Gauhati High Court****Case No:** Civil Revision No. 17 of 1966

Jethmal Bothra

APPELLANT

Vs

Bherudhan Parakh

RESPONDENT

Date of Decision: July 30, 1969**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 58

Hon'ble Judges: R.S. Bindra, J.C.**Bench:** Single Bench**Advocate:** A.M. Lodh, for the Appellant; A.K. Shyam Choudhury, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

R.S. Bindra, J.C.

1. In execution of his money decree, dated 11-3-1964, against Kamala Charan Nath, the decree-holder Jethmal Bothra secured attachment of certain bills, the money whereof was due to the judgment-debtor from P.W.D. authorities. Bherudhan Parakh filed objection against that attachment under Order 21, Rule 58, of the CPC contending that the judgment-debtor had no right, title or interest in the attached money in face of the power-of-attorney he (the judgment-debtor) had executed in his favour. The decree-holder traversed the claim of Bherudhan Parakh by pleading that he had neither any interest in, nor possession of, the attached money.

2. The executing court accepted the objection of Parakh and released the attached money on the findings that in terms of the power-of-attorney dated 1-9-1961, executed by the judgment-debtor in favour of Parakh he had agreed that neither he (judgment-debtor) nor any other person on his behalf shall be entitled to receive money due under the contracts taken by him from the Public Works Department and that that money shall be payable only to Parakh, and that there was sufficient consideration for the agreement made between Parakh and the judgment-debtor. It

was also found by the executing court that it had been agreed between the parties that the power-of-attorney shall not be revocable under any circumstances.

3. Having felt aggrieved with the lifting of the attachment, the decree-holder has come up in revision to this Court.

4. Shri A.M. Lodh, appearing for the petitioner, has urged vigorously that the executing court had gone wrong in accepting the claim of Parakh on the basis of title to the attached property inasmuch as such claims have to be adjudged purely on the footing of possession of the attached property to the entire exclusion of all considerations bearing on the title thereto. He submits further that the claim should have been rejected under rule 61 since it is patent that the P.W.D. authorities were holding the money in trust for the judgment-debtor and that Parakh, was not in possession of the money on the date it was attached. Shri A.K. Shyam Choudhury, representing Parakh, supports the order of the executing court on the basis of the provisions of rule 59. That rule provides that the claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of the property attached. It is the contention of Shri Choudhury that if an objector can prove either his interest in the property attached or possession over that property his claim has to be accepted.

5. The first question that falls for determination, on the basis of stand taken by the parties" counsel, is whether the question of title to attached property has any relevancy to a claim made under rule 58. There appears to be consensus of authority that the question that requires determination respecting a claim made under rule 58 is whether on the date of the attachment it was the judgment-debtor or the objector who was in possession of the property attached.

This view, I venture to state, is apparently opposed to what is mentioned in rule 59 which indicates that even on the basis of some interest in attached property the claimant may score against the decree-holder. At the same time it is evident that rules 60 and 61, which respectively bear the marginal notes "Release of property from attachment" and "Disallowance of claim to property attached", speak only of possession and not of title. Rules 58 to 63 of Order XXI fall under the heading "Investigation of Claims and Objections". I think these six rules constitute a complete code between themselves respecting investigation of claims and objections arising out of and filed against the attachment of properties until the right of the defeated party in the executing Court is determined by a regular suit instituted under Rule 63. As such all the six rules, from 58 to 63, have to be read together to find out their exact meaning and scope.

Before proceeding further, I would like to observe that if the words of a statute are in themselves precise and unambiguous, they have to be interpreted in their natural and ordinary sense. A statute expresses the will of the Legislature and the intention of the Legislature is best gathered from the words used by it is also well settled that

a construction which will leave without effect any part of the language of the statute will normally be rejected. In view of these principles of interpretation. I believe, it may not be wholly correct to state that the fate of objections filed under Rule 58 has absolutely nothing to do with the title of the claimant to the property attached. As mentioned earlier, the phraseology of rule 59 does not countenance such an interpretation. If the interest of the claimant in the attached property had no relevancy to the objection filed by him, the Legislature would not have used the words "interest in... the attached property" in that rule, nor issued a directive to the claimant, as is evident from the same rule, to adduce evidence to establish his interest in the attached property.

It is an established principle of interpretation of statutes that the Legislature must be presumed to have used all the words in a rule or section quite deliberately and with a view to achieve some objective. I now proceed to indicate that the expression "interest in... the property attached" was designedly used and that it has vital value in determining the objection filed by a claimant.

6. It will help in explaining the point I want to make if rules 59, 60 and 61 are reproduced here for convenient reference. They run as under:

R. 59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

R. 60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

R. 61. Where the Court Is satisfied that the property was, at the time it was attached, in the possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person In trust for him or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

According to rule 60, the attached property shall be released at the instance of the claimant if it were proved that such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him. It shall also be released even if it was in the possession of the judgment-debtor at the time of attachment provided his possession was not in his own right but on account of or in trust for some other person.

This expression "other person", I would like to emphasise, is not synonymous with the "claimant" or "objector" seeking relief under rule 59. It can include persons other than that claimant or objector. There appears no compulsion from the words of rule 60 to hold the expression "other person" as conterminous with the "objector" or the "claimant". The property will also be released under rule 60 if it was in possession of the judgment-debtor partly on his own account or partly on account of some "other person". Here, too the expression "other person" has, in my opinion, identical connotation. It would, therefore, follow that in terms of rule 60 the objection may be accepted and the property released if the judgment-debtor or his trustee does not happen to be in possession even though the objector is not proved to be in possession of the property. If title to the property has no relevancy while deciding the objection filed under rule 58, and if the objection can be accepted and the attachment lifted under rule 60 even though the claimant or objector is not in possession of the property, then a really anomalous situation can arise.

To cite an instance A files an objection to attachment under rule 59 without indicating his interest in the property and without asserting his possession over it. If such an objection is entertained, and nothing stated in rule 58 stands in the way of Court adopting such a course, the property may be released from attachment under rule 60 even if the judgment-debtor is not proved to be in possession of it if we accept the proposition canvassed by Shri Lodh on behalf of the decree-holder, namely, that fate of objections lodged under rule 58 has to be adjudged, in all eventualities, on the basis of possession to the entire exclusion of title. In such an hypothetical case, a mere stranger will have intervened in a litigation between the decree-holder and the judgment-debtor and created complications for both of them I am, therefore, led to the inevitable and at the same time practical, conclusion that where the objector or claimant is not in possession of the attached property he can succeed under rule 60 if he can establish two points, namely, (i) that he has an interest in the property attached, and (ii) that the property is not in the possession of the judgment-debtor or in the possession of some one holding in trust for or on behalf of the judgment-debtor.

This conclusion Is reinforced by the opening words of rule 60 which demand that the property shall be released from attachment when it is not in possession of the judgment-debtor or in the possession of some one in trust for the judgment-debtor, only if the claimant or objector satisfies the court that the property was not in the possession of the judgment-debtor or in the possession of some one in trust for him "for the reasons stated in the claim or objection. These underlined (here in " ") words clearly refer back to what is mentioned in rule 59. That rule, I may repeat, enacts that the claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached. This interpretation of rule 60 gives full meaning to each and every word used in that rule as also in rule 59 and thereby satisfies another principle of interpretation of statutes, viz. that no word or letter used by the Legislature in any

measure should be considered otiose.

7. In the preceding para, I have shown how the claimant can succeed on establishing his interest in the property and on proving the possession of some one other than the judgment-debtor over that property, provided this latter person does not hold the property in trust for the judgment-debtor. The claimant or the objector can also succeed if he can establish his possession over the property on the date it was attached. This conclusion emerges from the combined reading of rules 59 and 60. Rule 59 directs that the claimant may adduce evidence either respecting his interest in the property or his possession over it. In case his possession over the property is proved, then the claim to possession of the judgment-debtor, or for that matter of any other person, would not arise, and in such an event the objection would be accepted and property released from attachment.

Rule 61 states that if the property was in the possession of the judgment-debtor on the date of attachment, in his own right and not on account of any other person, or was in the possession of some other person in trust for him the court shall disallow the claim. It is obvious that if the property is in possession of the judgment-debtor or in possession of some one in trust for him, it cannot be simultaneously in possession of the claimant and in such a case his claim shall be rejected on the basis of possession of the judgment-debtor. In the circumstances contemplated by rule 61, the fate of the claim or objection filed under rule 58 shall be determined only on the basis of possession. The question of interest in the attached property of the claimant or objector assumes relevancy as also importance when release of property from attachment is being considered under Rule 60.

The conclusions recorded above can now be briefly summarised asunder:

- (i) The claim filed under Rule 58 shall be rejected in terms of Rule 61 if the property was in the possession of the judgment-debtor on the date it was attached or in possession of some one holding in trust for him or as a tenant under him;
- (ii) The claim shall be accepted and property released from attachment if the objector or claimant has some interest in the property and the possession over the property on the date it was attached, as mentioned in Rule 60, was not of the judgment-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him; or if it was in possession of the judgment-debtor on the date of attachment, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person or partly on his own account and partly on account of some other person. In the last mentioned case, it shall be open to the Court to make an order releasing the property wholly or to such extent as it thinks fit;
- (iii) The claim shall also be accepted and property released from attachment in terms of rule 60 if the claimant was in possession thereof on the date of attachment, even though he had no interest in the property. His possession would negative the

claim to possession if made by the judgment-debtor and so rule 61 would not come into play.

It would be apparent that in the case mentioned at No. (ii) the question of title of the claimant or objector to the attached property would be a relevant factor.

8. This brings us to the consideration of the merits of the present revision petition. It is common ground between the contending parties that the money due under the attached bills was in possession of the Government on the date it was attached. There is also no dispute on the point that the money was due to the judgment-debtor in respect of some contract work done by him for the Government. Therefore, the money was in possession of the Government obviously in trust for the judgment-debtor. It is equally clear that the money was not in the possession of the claimant Parakh on the date of attachment. Hence, the case clearly falls within the purview of rule 61, which, it can bear repetition to state, provides, *inter alia*, that where the property was, at the date it was attached, in the possession of some person in trust for the judgment-debtor, the court shall disallow the claim. This view gathers corroboration from the case of *Gauhati Bank Ltd. v. Rajendra Nath*, AIR 1959 Ass 167, and also from that of [Tamluk Loan Office Co. Ltd. Vs. Kedar Nath and Others](#). Hence, the executing court gravely erred in allowing the claim of Parakh. I would, therefore, accept this petition, set aside the impugned order, and reject the claim of Parakh. The petitioner Jethmal Bothra shall get costs of both the Courts from the objector Parakh. Advocate's fee Rs. 32/-.