

Jogendra Nath Chatterjee Vs Manmatha Nath Ghose and Another

Court: Calcutta High Court

Date of Decision: June 7, 1912

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 90

Citation: 15 Ind. Cas. 668

Hon'ble Judges: Mookerjee, J; Beachcroft, J

Bench: Division Bench

Judgement

1. The question of law which requires decision in this Rule is one of first impression; namely, whether a person, who has obtained an attachment of

property before judgment under Order XXXVIII, Rule 5 of the Code of 1908, is a person whose interest is affected by the sale of that property at

the instance of a decree-holder against the defendant in the suit within the meaning of Rule 90 of Order XXI of the Code. It appears that the

petitioner, Jogendra Nath Chatterjee, in execution of a decree for money which he held against his judgment-debtor, Basanta Kumar Chatterjee,

purchased the disputed property at the execution sale on the 21st April 1911. On the 31st March 1911, the property had been attached at the

instance of the opposite party, Monmatha Nath Ghose, during the pendency of a suit which he had instituted. On the 20th May following,

Monmatha Nath Ghose applied for reversal of the sale under Rule 90 of Order XXI of the Code. The application was resisted by Jogendra Nath

Chatterjee on the ground that Monmatha Nath Ghose had no locus standi to make the application under Rule 90. Effect was given to this

contention and the application was refused. Upon appeal, that order has been discharged and the original Court has been directed to consider the

matter on the merits. The Subordinate Judge has held that Monmatha Nath Ghose is entitled to apply under Rule 90 as his interest has been

affected by the sale. The question for consideration is, whether this view of the scope of Rule 90 is well founded.

2. On behalf of the petitioner, it has been contended that an attachment before judgment does not by itself create any interest in the property

attached; and in support of this view, reliance has been placed upon the cases of Seudut Roy v. Sree Canto Matty 33 C. 639 : 10 C.W.N. 634

and Basiran Malo v. Katayani Debi 38 C. 448 : 10 Ind. Cas. 305 : 15 C.W.N. 795. On behalf of the opposite party the contrary view has been

maintained, and reliance has been placed upon the cases of Moti Lal v. Karrabuldin 25 C. 179 : 24 I.A. 170 : 1 C.W.N. 639 and Sankaralinga

Reddi v. Kundasami Teven 30 M. 413 : 17 M.L.J. 334 : 2 M.L.T. 365, In our opinion, the petitioner is entitled to succeed.

3. As was pointed out by Mr. Justice Woodroffe in the case of Sewdoot Roy v. Sree Cant Maity 33 C. 639 : 10 C.W.N. 634, the object of an

attachment before judgment is simply to safeguard the property, so as to enable the plaintiff to realise the amount of his decree if he should get one.

He has, however, no lien or charge on the property which remains that of the defendant. He has a security; but this does not import present

property or even beneficial interest. Substantially the same view was taken in the case of Basiran Malo v. Kattayani Debi 38 C. 448 : 10 Ind. Cas.

305 : 15 C.W.N. 795, where the distinction between the two kinds of attachment, namely, attachment before judgment and attachment in

execution, was explained, and it was pointed out that the objects for which the two kinds of attachment are made are entirely different. An

attachment prior to decree is not an attachment for the enforcement of the "decree"; but it is a step taken merely for the purpose of preventing - the

debtor from delaying or obstructing such enforcement when the decree subsequently passed shall be sought to be executed. An attachment after

decree, on the other hand, is an attachment made for the immediate purpose of carrying the decree into execution, and it pre-supposes an

application on the part of the decree-holder to have his decree executed. The cases of Motilal v. Karrabuldin. 25 C. 179 : 24 I.A. 170 : 1 C.W.N.

639 and Sankaralinga Reddi v. Kandaswami Tevan 30 M. 413 : 17 M.L.J. 334 : 2 M.L.T. 365 are not opposed to this view. In those cases,

there was an attachment after judgment, and it was pointed out that even such an attachment in execution merely prevents alienation. It is further

worthy of note that Rule 90 requires that the applicant should be either the decree-holder or any person entitled to share in a rateable distribution

of assets or whose interests are affected by the sale; in other words, such person must have an existing interest which is affected by the sale. The

position of a person who has obtained an attachment before judgment and has not yet obtained a judgment, is that he has a chance of obtaining a

judgment for the satisfaction whereof he is entitled to proceed against the property given to the Court by way of security. He had undoubtedly no

present interest which is affected by the sale. We are, therefore, of opinion that the applicant under Rule 90 had no locus standi and that his

application was rightly rejected by the Court of first instance.

4. The result is that this Rule is made absolute, the order of the Subordinate Judge discharged and that of the Court of first instance restored with

costs both here and in the Court of appeal below. We assess the hearing fee at two gold mohurs.