

(1937) 02 BOM CK 0026

Bombay High Court

Case No: None

Babaldas Trikamdas and Co.

APPELLANT

Vs

Ajmir Ramsunder

RESPONDENT

Date of Decision: Feb. 26, 1937**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 63

Citation: AIR 1937 Bom 490 : 172 Ind. Cas. 420**Hon'ble Judges:** Beaumont, C.J**Bench:** Single Bench

Judgement

@JUDGMENTTAG-ORDER

Beaumont, C.J.

This is a revision application against an order made by the Full Court of the Bombay Small Cause Court, and the question raised is as to the jurisdiction of the Small Cause Court to entertain a suit by a decree-holder to establish his right to the attachment of property under Order XXI, Rule 63, Civil Procedure Code. The material facts are that the plaintiff obtained a decree for Rs. 500 odd, and in January 1936 in execution of that decree, he attached fifteen buffaloes alleged to belong to the judgment-debtor. The present opponent made a claim to those buffaloes under Rule 58 of Order XXI. That claim was inquired into by one of the learned Judges of the Small Cause Court and was eventually allowed, and under Rule 60 an order was made setting aside the attachment. The plaintiff then brought a suit in the Small Cause Court under Rule 63, which is in these terms:

63. Where a claim or an objection is preferred the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

2. The learned Judge, before whom the suit came, entertained it and made a decree, setting aside the summary order made under Rule 60, and directing attachment to continue and immediate execution to issue. The matter was then taken before the Full Court, who held that the Small Cause Court had no jurisdiction to entertain the suit, because it was a suit for a declaratory order, although I may point out that the learned Judge who tried the suit had made no declaration. General jurisdiction is conferred on the Small Cause Court by Section 18, Presidency Small Cause Courts Act, 1882, and that jurisdiction extends to suits of a civil nature when the amount or the value of the subject-matter does not exceed Rs. 2,000. As the decree in this case was for much less than Rs. 2,000, and nobody suggests that fifteen buffaloes are worth Rs. 2,000, there is no doubt that from the point of view of pecuniary limit, the Court would have jurisdiction but the Full Court considered that the Court had no jurisdiction, because u/s 19, Clause (s), suits for declaratory decrees are excluded from the jurisdiction of the Court. If the Full Court is right in thinking that this suit is in its nature a suit for a declaratory decree, then no doubt the Court had no jurisdiction. The question really is, whether the suit is a suit for a declaratory decree. Now, the (c) actual words of Rule 63, as I have pointed out, are "...a suit to establish a right which he claims..." All suits are suits to establish rights of one sort or another, and obviously the right may or may not be a right to a declaration. The words of the Rule are on that point completely neutral. It may well be that an order might be framed under Rule 63 in a declaratory form,--an order, declaring that the plaintiff is entitled to attach the property of the judgment-debtor, would probably satisfy the plaintiff's requirements : but on the other hand, it seems to me plain that the Court can make an order which is not in the form of a declaration. An order in this form "the Court being of opinion that the judgment-debtor is entitled to the property sought to be attached directs, notwithstanding: the order already made under Rule 60, the attachment of the plaintiff to continue," would, in my opinion, be a proper and effective order which does not involve in point of, form any declaration. I think, however, that one has to look at the substance of the order sought for under Rule 63 without regard to the Particular form in which it may be expressed.

3. Now, it has been held in various cases, both in this Court and in other Courts, that a suit by the claimant under Rule 63 is a suit to establish a right to the claimant's property which is sought to be attached as belonging to the judgment-debtor, and is not a suit for a declaration. But it is argued that inasmuch as decree-holder claims no title to the property but a mere right to attach it, therefore a suit by him under Rule 63 is a suit to establish a right other than a right to property, and is, therefore, of a declaratory nature. But I am unable to agree with that view. It is no doubt a suit to establish a right and not to establish title to property, but the right which the plaintiff seeks to establish is a right to attach the judgment-debtor's property and not merely a right to a declaration that he is entitled to attach the judgment-debtor's property. The plaintiff seeks a substantive right and not a mere

right to a declaration. Cases arising under the former Small Cause Courts Act, seem to me to have no application, because that Act defined the particular classes of cases in which the Court had jurisdiction. I may point out that the Privy Council in *Phul Kumari v. Ghanshyam Misra* 35 C 202 : 35 IA 22 : 7 CriLJ 36 : 12 CWN 169, held that the essence of a suit under the then Section 283 of the Code, corresponding to the present Rule 63, was to set aside an order. That opinion was expressed in reference to a point arising under the Court Fees Act, and it shows that their Lordships considered that the essence of the suit under Rule 63 was to set aside an order and not merely to ask for a declaration. My own view is that the proper form of order in such a suit as this is not to set aside the order under Rule 60, which the Court had jurisdiction to make but to direct that, notwithstanding the order previously made under Rule 60, the attachment is to continue. That is substantially the order which the learned trial Judge made. In my opinion, therefore, the Court had jurisdiction to entertain the suit and the order of the trial Court should be restored. The applicant is entitled to costs throughout.