

Mt. Basanti Devi Vs. Chotte Lal-durga Prasad and ors.

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Court : Allahabad

Decided On : Apr-16-1931

Reported in : AIR1931All607

Appellant : Mt. Basanti Devi

Respondent : Chotte Lal-durga Prasad and ors.

Judgement :

Sulaiman, Ag. C.J.

1. This is an objector's application in revision from an order refusing to inquire into the objection made under Order 21, Rule 58, Civil P. C, to an attachment. It appears that while the decree was in execution, certain property was attached by the decree holder and an objection was preferred by the present applicant under which she claimed the property as her own. This objection was dismissed for default on 12th September 1925. It was for her to sue within one year of that dismissal if she wanted to nullify the order disallowing her objection. It happened however that owing to the nonpayment of the necessary expenses for issuing of a fresh proclamation the decree-holder's application for execution was itself struck off for default. The order of the Court did not clearly specify that the attachment ceased, but it followed as a matter of law under Rule 57. This happened on 16th March 1926, long before the period of one year had expired from the dismissal of the objection. There was an application for execution and a fresh attachment followed by a fresh objection. The Court below rejected the objection on the

ground that she failed to bring a suit within a year of the dismissal of the previous objection. It seems to us that the Court below has refused to exercise the jurisdiction vested in it to inquire into the objection of the applicant on the wrong view that there was a bar to the hearing of her objection.

2. Rules 58 and 61 show that the objection preferred is probably against the attachment of the property of the claimant, her principal, object being to get her property released from such attachment. If the objection is disallowed the party against whom an order is made can institute a suit under Rule 63 to establish his right to the property, and subject to the result of such suit the order shall be conclusive. The language of Rule 63 is somewhat ambiguous and it may have been possible to treat it as implying that it was the duty of the objector whose objection has been dismissed to establish her claim to the property in dispute within one year from the dismissal of the objection. But the Courts in India have interpreted the rule so as to apply it to the order of attachment; it has been held by the High Courts at Calcutta, Bombay and Madras that where the attachment has ceased to exist within the period of one year it is no longer incumbent upon the claimant to file a suit for a declaration of his title to the property: *Najimunnissa Bibi v. Nacharuddin Sardar* : AIR1924 Cal744 , *Manilal Girdhar v. Nathalal Mahasukhram* A.I.R. 1921 Bom. 35 and *Kumara Goundan v. Thevaraya Reddi* A.I.R. 1925 Mad. 1113. There is therefore the probability that the applicant did not think it worth while to institute a suit after the attachment had ceased to exist in view of these rulings. We do not think that it would be proper for us to depart from this course of decision' interpreting the rule in this way. Accepting the view expressed in these cases we hold that as soon as the attachment ceased to exist the obligation on the claimant to institute a civil suit also disappeared and she is not prevented; from bringing an objection afresh when the property has been re-attached.

3. The application is allowed, the order of the Court below is set aside and the case is remanded to that Court for disposal on the merits. The applicant will have the costs of the revision from the respondent.