

Harimal Vs. Emperor

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Court : Allahabad

Decided On : Dec-09-1932

Reported in : AIR1933All135

Appellant : Harimal

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is an application in revision against an order of the learned Sessions Judge of Cawnpore confirming an order of a First Class Magistrate of Cawnpore, dated 9th June 1932, dismissing the objection of the applicant Hari Mal to the attachment of his property under Section 386, Criminal P.C., which attachment was made for the realization of a fine imposed on his brother Bisu Mal. Section 386(2) states that the Local Government may make rules for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of a warrant. It is provided in para. 819 of the Manual of Government Orders that the inquiry shall be conducted in the same way as an inquiry under Order 21, Rules 58 to 61, Civil P.C. The objection was made that the property which had been attached and which was moveable property was property which belonged to the objector and that the objector and his brother were

separate. Rule 58, Order 21, Civil P.C, states

where any claim is preferred to or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment the Court shall proceed to investigate the claim.

2. The language used here is mandatory and states that the Court shall proceed to investigate the claim. It is stated that witnesses had been summoned and were in attendance at the Court of the Magistrate and therefore it was his duty to hear those witnesses in support of the objection and having heard the evidence in support of the objection to call for evidence from the Sub-Inspector in support of attachment. No proper inquiry was made, and the Magistrate's order shows that all that he did was to look at a certain register which he describes as a landlord's register which had not been proved before him by any witness. I consider that a proper inquiry should be held and accordingly I direct that the Magistrate should hold an inquiry in accordance with the provisions noted above. Having held a proper inquiry the Magistrate should make an order disposing of the objection according to law.

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