

Basdeo Vs. John and Co. and ors.

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Court : Allahabad

Decided On : Apr-20-1953

Reported in : AIR1953All717

Judge : Agarwala and ;Asthana, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 52 - Order 40, Rule 1

Appeal No. : Ex. First Appeal No. 308 of 1952

Appellant : Basdeo

Respondent : John and Co. and ors.

Advocate for Def. : Gopal Behari, Adv.

Advocate for Pet/Ap. : B. Dayal, Adv.

Disposition : Appeal allowed

Judgement :

Agarwala, J.

1. This is an appeal arising out of execution proceedings. The facts may be briefly stated as follows:

2. In a suit filed in the Court of the Civil Judge, Agra by one Loonkaran Sethiya against I. E. John and others for recovery of money and for a declaration of a charge over the movable properties of the defendants who own a group of mills at Agra which are called the Johns Mills, an order for attachment before judgment was made and receivers were also appointed for running the mills. There was an appeal to this Court against that order. This Court modified the order appointing receivers and directed that the receivers shall act for the protection of the interests of Loonkaran Sethiya and shall be in possession of the moneys that may be received from certain sources mentioned in the order. The receivers in this manner came to be in possession of a certain sum of money which they deposited in the Imperial Bank at Agra. While the suit of Loonkaran Sethiya was pending in the Civil Judge's Court at Agra another suit was filed by another creditor of the Johns family in the Court of the Additional Civil Judge, Agra. This was the suit of Basdeo appellant in the present appeal. It was also a suit for recovery of money and a decree was obtained on 29-1-1951, for a sum of Rs. 25,000 and odd. Easdeo appellant then applied for attachment of the money in the hands of the receivers. This attachment was made in two modes. The Additional Civil Judge sent an order of attachment of money direct to the Imperial Bank at Agra. He also sent a request to the Civil Judge, Agra, to make the money available to that Court for payment to Basdeo appellant, decree-holder. The request to the Civil Judge was apparently sent under the provisions of Order 21, Rule 52, Civil P. C. The receivers filed an objection to the attachment in the Court of the Additional Civil Judge. The learned Additional Civil Judge thereupon heard the parties and allowed the objection of the receivers and withdrew the order of attachment. Against this order the appellant has come up in appeal to this Court.

3. The only point for consideration before us is whether in the circumstances of the case the order of attachment should have been withdrawn. It has been urged by learned counsel for the appellant that no decree had been passed in the suit of Loonkaran Sethiya and that any order of this Court in the appeal arising out of the order of attachment before judgment and the appointment of the receivers made in the suit of Loonkaran Sethiya would not bind him because he was no party to that litigation and that if any money belonging to his judgment-debtors was in the hands of the receivers he was entitled to attach it and realise it in execution of his

decree. On the other hand, learned counsel for the respondents has urged that the appellant could not execute his decree against the receivers who were the officers of the Court appointing them, viz., of the Civil Judge of Agra, and that the appellant could only execute his decree if he had obtained leave to do so from the Civil Judge, Agra, and that the order of attachment made by the Additional Civil Judge was without jurisdiction and, indeed, in contempt of the Court of the Civil Judge.

4. A receiver appointed by a Court is an officer of the Court. The properties in his possession as such are deemed to be in 'custo-dia legis'. He being an officer of the Court, if he were allowed to be proceeded against in suits or other proceedings at the instance of private parties it may be that the receiver may not be able to carry out his duties as directed by the Court appointing him. In order to avoid such difficulties it has been held that no one should proceed against a receiver without first obtaining the leave of the Court appointing him, vide -- 'Fraser v. Krishna Swami Aiyer'. AIR 1923 Mad 144 (2) (A). Even when leave to sue has been given, if execution of the decree against the receiver by attachment and sale of the properties in his possession is desired, fresh leave has to be obtained of the Court appointing him; -- 'Sridhar v. Mugniram'. AIR 1924 Pat 491 (B) and -- 'Sm. Jugal Kishore v. Deva Prasanna', AIR 1928 Pat 321 (C). It will, however, be observed that the permission of the Court is only necessary when it is proposed to proceed against the receiver direct.

5. There is, however, another method provided under Rule 52 of Order 21, Civil P. C. in which execution can be obtained when the execution is in respect of property in the custody of a Court. Under that rule, the executing Court may send a letter of request to the Court in whose custody the property is to hold such property subject to the further order of the attaching Court. There is a proviso to the rule which says that any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court in whose custody the property desired to be attached is. Since the property in the possession of a receiver is deemed to be property in the custody of the Court there is no reason why Order 21, Rule 52, C. P. C. should not apply to such property. It follows, therefore, that where execution is desired in respect of

property in the hands of a receiver or other officer of a Court the procedure laid down in Rule 52 of Order 21 may be followed and in such a case there is no necessity of leave of the Court appointing the receiver being obtained in the first instance. Leave would be necessary, as already stated, only when execution is desired directly against the receiver without the intervention of the Court appointing him.

6. In the present case the Additional Civil Judge had sent a letter of request to the Civil Judge to hold the moneys in the custody of the Court through the receiver subject to the further orders of the Court. When such a letter of request was received by the learned Civil Judge it was open to him to invite any objection from the receiver or from Loonkaran Sethiya, that is to say, from persons who were interested in the disposal of money and to decide any question of title or priority between the different claimants including the appellant Basdeo and if there was no valid objection to the money being placed at the disposal of the Additional Civil Judge to send the money to that Court.

7. The learned Additional Civil Judge withdrew his order of attachment simply because he found that this Court had in an appeal, to which the appellant was no party, observed that the moneys realised by the receivers were to be earmarked for certain specific purposes. But it would be for the learned Civil Judge to decide whether any moneys could be placed at the disposal of the Additional Civil Judge in execution of the appellant's decree or not. The Additional Civil Judge was not right in withdrawing his letter of request for attachment of the moneys in the custody of an officer of the learned Civil Judge. His order of attachment sent to the Imperial Bank, Agra, was however, not correct.

8. The result, therefore, is that we allow this appeal, set aside the order of the learned Additional Civil Judge, dated 9-8-1952, and direct that his earlier order requesting the Civil Judge to attach the property in the hands of the receiver will continue in force. In the circumstances of the case we make no order as to costs.

9. The record of this case will be sent down to the Court below immediately.