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Court : Rajasthan

Decided On : Jan-05-1968

Reported in : AIR1968Raj296

Judge : Kan Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 63

Appeal No. : Civil Revn. No. 511 of 1967

Appellant : Daulat Singh

Respondent : Karni Dan

Advocate for Pet/Ap. : Jinendra Kumar Jain, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Kan Singh, J.

1. This is a revision application directed against an order of the Civil Judge, Jodhpur dated 20-10-67.
2. It appears that a certain property is a subject-matter of attachment in execution of two decrees; one of which is under execution in the court of the Civil Judge and

another in the court of the Additional Munsiff, Jodhpur. By the order under revision the Civil Judge directed the summoning of the execution file in the court of the Additional Munsif.

3. In challenging the correctness of this order it was submitted by learned counsel that the order of the Civil Judge dated 20-10-1967 is without jurisdiction inasmuch as in the first place, the court of the Additional Munsif cannot be said to be a court of lower grade than that of the Civil Judge according to the provisions of the Rajasthan Civil Courts Ordinance and in the second place, it is argued that the court should have called for the record through the District Judge, as both the courts were under the control of the District Judge.

4. I have heard Shri Jain. He has invited my attention to a passage in Mulla's Code of Civil Procedure at page 308, as also to Section 21 of the Rajasthan Civil Courts Ordinance. He has also cited *Surendra Kumar v. Jamini Kumar*. AIR 1936 Cal 723.

5. Section 63 of the Code of Civil Procedure deals with a situation where a property may be subject matter of attachment simultaneously under orders of two different courts in execution proceedings before them. In order to resolve the possible conflict of jurisdiction it has been enacted that the court which shall determine any claim or any objection to the attachment of the property shall be the Court of higher grade or where there is no difference in grade between such courts, the court in whose decree the property was first attached. In a case where one court is undoubtedly of a higher grade in comparison to the other, the jurisdiction to decide objections to the attachment has been conferred exclusively on the court of the higher grade and has been denied to the court of lower grade. Shri Jain has endeavoured to show that the court of the Civil Judge and that of the Additional Munsif were courts of equal rank as appeals from their decisions lay to the District Judge. Appealability alone, in my view, is not the decisive test for seeing which of the two courts is of higher grade or that they are of equal grade. The pecuniary jurisdiction and other factors bearing on the jurisdiction have also to be taken due note of. It has been held in *Gouri Shankar v. Kashi Prasad*, AIR 1957 Cal 648 that the court of a Subordinate Judge would be a Court of a grade higher

than that of the Munsiff's court for purposes of Section 63 of the Code of Civil Procedure. Likewise it was held in *Wasudeo Baliram v. Laxman Ramchandra*, AIR 1936 Nag 270 that the grade of a court depends on the pecuniary or other limitations of its jurisdiction. The same has been the view taken by this Court in *Gordhan v. Azimkhan*, AIR 1963 Raj 224 to which learned counsel himself candidly invited my attention. Therefore, the Court of Civil Judge is of a grade higher than that of an Additional Munsif. In these circumstances the jurisdiction to deal with objections against attachment of the property vests exclusively in the Civil Judge and the Additional Munsif has no jurisdiction left in himself. In that situation the proceedings with the Additional Munsif will remain at a standstill and he will not be able to do anything further in the matter. If in these circumstances the Civil Judge has called for the record, then he has not done anything which goes contrary to the provisions of Section 63 of the Code of Civil Procedure. The passages that were read out to me from Mulla's Code of Civil Procedure and from AIR 1936 Cal 723. relate to getting of proceeds realised in execution proceedings. I am not called upon to deal with a situation as was discussed in these passages and I express no opinion about the legality of anything that a court might do in trying to get the sale proceeds recovered by another Court. The present is a case of only summoning the file and it was not necessary for the Court to approach the District Court for the purpose. One cannot say at this stage as to what the Civil Judge would be doing with that file, as the order under revision only says that he had ordered the summoning of that file. This order, in my view, does not suffer from any flaw and, therefore, does not call for interference.

6. The revision application has, therefore, no force and is hereby rejected summarily.