Yellammal Vs. Ayyappa Naick

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Court : Chennai

Decided On : Jan-19-1914

Reported in : AIR1941Mad126; 22Ind.Cas.870; (1914)26MLJ166

Appellant : Yellammal

Respondent : Ayyappa Naick

Judgement :

Charles Arnold White, Kt., C.J.

1. The qustion for determination in this appeal is--Is the plaintiff's suit barred by limitation?

2. The material facts and dates are as follows:

On July 4th 1905 the 4th defendant who had obtained a decree against one Perumal Naik, attached a debt alleged to be due to Perumal Naik by the 1st defendant.

3. On July 29th 1905 the alleged debt became payable.

4. On November 6th 19.05 the 1st defendant obtained on order of Court giving him leave to pay the amount of the debt into Court. On June 15th 1906 the 1st defendant paid the money into Court. On October 3 1906 the money was paid out to the 4th defendant.

5. On the attachment of the debt the plaintiff had put in a claim petition alleging that the debt was payable to him as having been assigned to him by Perumal Naik prior to the attachment. This petition was dismissed. He then instituted a suit under Section 283 of the Civil Procedure Code (1882). He failed in the Court of First Instance but succeeded on appeal.

6. On September 15th 1908 he instituted a suit for the recovery of the money which had been paid out of Court to the 4th defendant.

7. If the period of limitation is 3 years and runs from the date of the attachment of the debt- (July 1st 1905) the suit is time-barred. If it is 3 years and runs from the date of the payment out of Court to the 4th defendant (October 3, 1906) the suit is in time.

8. The appellant has contended that the appropriate article is Article 29 and that the suit is time-barred.

9. It is not necessary to consider whether the suit is for compensation within the meaning of the article. Assuming it is, the question is did the attachment of the debt constitute a 'wrongful seizure of movable property under legal process ' within the meaning of the article. There is no doubt there was a ' legal process ' but was there any ' seizure' thereunder I am of opinion that there was not.

10. The procedure in connection with the attachment of a debt not secured by a negotiable instrument is regulated by Order XXV Rule 46 (See Section 268 of the Old, Cods). Tha attachment is made by a written order prohibiting the creditor from receiving the debt and the debtor from making payment thereof until the further order of the Court. In the case of moveable property the broad distinction seems to be that when the property is in the possession of the judgment-debtor at the time the order of attachment is made the procedure is by seizure actual or constructive. See for instance Order XX Rule 43 (moveable property other than agricultural produce), Rule 44 (agricultural produce), When the property is not in the possession of the debtor the procedure is by way of prohibitory order. The only exception to the general rule appears to be in the case of a Negotiable Instrument (rule 51). In the case of any negotiable instrument to which that rule applies the

attachment must be made by actual seizure whether the instrument is in the possession of the judgment-debtor or not. Under the English Law the question whether an act of the sheriff constitutes a seizure is one of fact, the test being whether an act has been done sufficient to intimate to the judgment-debtor or his servant that the goods have been seized, See the case cited in Halsbury's Laws of England, Vol, XIV, paragraph 108. See, too, Multan Chand Kanyalal v. Bank of Madras I.L.R. (1903) M. 346.

11. As it seems to me seizure involves something in the nature of a transfer of possession, actual or symbolical. Not only is no transfer of possession effected by the making of a prohibitory order in the case of a debt due to the judgment-debtor under Rule 46, but the order contemplates possession not by the judgment-creditor but by the judgment-debtor's debtor pending the further order of the Court.

12. The appellant in this case cannot rely on the payment into Court by the 1st defendant (judgment-debtor's alleged debtor) on June 15. 1906 as a seizure under legal process. The payment was a voluntary payment made by way of an interpleader proceeding. I do not think that the payment of money into court ' in consequence of a legal process of attachment' is in all cases enough to constitute 'a seizure.' In the present case the payment was no doubt made in pursuance of, as well as in consequence of, an express order giving leave to pay in (the actual order is not before us). But the order was made on the application of the judgment debtor's alleged debtor who wished to have the protection of the order of the court. There is no reason to suppose that any order for leave to pay the money in, would have been made against the judgment-debtor's alleged debtor if he had not asked to be allowed to make the payment. In Jagjivan Javherdas v. Gulam Jilani Ghoudhri I.L.R. (1883) B. 17 the question whether the attachment of the debt constituted a seizure does not seem to have been considered.

13. On behalf of the appellant it has been contended, in the alternative that Article 36 applies. I am clearly of opinion that it does not.

14. I think this case is distinguishable from Narasimha Bow v. Gangarajan where the majority of the court were of opinion that Article 29 applied. There the attached property was ordinary move-able property.

15. I am of opinion that either Article 62 or Article 120 applies and would dismiss this appeal with costs.

Sanharan Nair, J.

16. I agree.

Oldfleld, J.

17. I agree.