

APPELLATE CIVIL.

Before S. K. Ghose J.

1931
Aug. 11.

RAJENDRANATH DAS

v.

CHAIRMAN, DISTRICT BOARD, JESSORE.*

Execution—Attachment of moveable property—Continuation of attachment after release of a share on investigation of claim, if legal—Code of Civil Procedure (Act V of 1908), O. XXI, rr. 43, 47, 60.

When moveable properties are attached by actual seizure under Order XXI, rule 43 of the Code of Civil Procedure, and a claim being preferred and investigated, it is found that the claimant has got a share or interest in them as co-owner with the judgment-debtor, the executing court cannot keep the share of the judgment-debtor under attachment. It must release the entire properties and then proceed to attach the share of the judgment-debtor under Order XXI, rule 47 of the Code.

CIVIL RULE obtained by the claimant,
Rajendranath Das.

The facts material to the Rule have been stated in the judgment.

Bhudhar Haldar for the petitioner. It has been found that the judgment-debtor is only a part-owner of the attached properties and such share could only be attached under Order XXI, rule 47 of the Code. The attachment, having been effected by actual seizure under Order XXI, rule 43, is illegal and cannot be retained.

Amiruddin Ahmad for the opposite party. Rule 60 of Order XXI provides for cases like this. The goods were in possession of the judgment-debtor partly on his own account and partly on account of the claimant, and the executing court was fully empowered to release the properties under attachment

*Civil Revision, No. 605 of 1931, against the order of M. Rahman, Second Munsif of Jessore, dated March 20, 1931.

to such extent as it thought fit. The application of rule 60 is not restricted to immoveable property, but it is applicable to moveable property as well.

Rule 47 applies to cases where the decree-holder from the beginning applies for attachment of only a share or interest in moveable property. Subsequent finding of an investigating court cannot retrospectively invalidate an attachment which, at the time it was made, was in due compliance with law. What the claimant wants here is that not only his half share should be released but that of the judgment-debtor as well who has not come to court and this he is not entitled to do.

S. K. GHOSE J. The Chairman of the District Board obtained a rent decree against some persons and, in execution of that decree, he got the following attached, namely, three boats, one cow, one cycle, and one waterpot. The petitioner in this Rule filed an objection for investigation under Order XXI, rule 58 of the Code of Civil Procedure, claiming the moveables as belonging solely to him. The learned Munsif has found that the cow belongs to the claimant, but that, as regards the remaining moveables, he has only a half share. In that view, he has directed that a half share be released from attachment. The present Rule was issued by my learned brother, Mr. Justice Mitter, on the ground that the learned Munsif ought to have held that, without complying with the provisions of Order XXI, rule 47, there could be no legal attachment and, as that was not done, the attachment is liable to be set aside. The learned Munsif remarks in his judgment that Rule 60 is a complete answer to this objection and this is also contended by the learned advocate for the opposite party in this Court. Rule 47 is a new provision and it has been said that it was made because a share or interest in moveable property is incapable of actual seizure. There is nothing in rule 60 preventing the court from releasing the entire property from attachment and, if it is moveable property, so that a

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share of it is incapable of actual seizure, it would be the better course for the court to release the entire property and to proceed by way of attachment under Rule 47. I do not see why this should not be done in this case. The order of the learned Munsif, dated the 20th March, 1931, keeping a half share of the moveables in question in attachment is set aside and the lower court is directed to proceed according to law. The Rule is made absolute, but, having regard to the circumstances of the case, I make no order as to costs in this Court.

Rule absolute.

A.A.