

be said that Ram Chandar and Tej Ram and Raushan Lal were bound to plead that they had a right of pre-emption, in anticipation of any sale deed that might be in future executed under the orders of the court. This being so, it is difficult to hold that the present suit is barred by the principle of *res judicata* on account of the omission on the part of Ram Chandar and Tej Ram and Raushan Lal to set up their right of pre-emption.

Only one appeal has been preferred under section 18 of the Act by Lal Chand and as a result of the consolidation of the suits in the courts below our judgement governs both these cases. The appeal is accordingly dismissed with costs.

REVISIONAL CIVIL.

Before Mr. Justice Kendall.

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(PETITIONER) *v.* HAR CHARAN DAS (DECREE-HOLDER AND GULZARI LAL (JUDGEMENT-DEBTOR).\*

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*Act No. XIX of 1925 (Provident Funds Act), sections 2 and 3(1)—Provident Funds Rules, rule 10—Authority of rules—Provident Funds deposit—Attachment after retirement—Civil Procedure Code, section 60 (k)—Government of India Act 1919, section 96B, clause (4).*

Money lying to the credit of a retired Government servant in the General Provident Fund is not liable to attachment in execution of a decree against him.

Rule 10 of the General Provident Funds rules is merely a rule of procedure for the Accounts Officer and does not legalize an attachment or authorize the Accounts Officer to comply with a notice of attachment. The rule can have no statutory authority to override the provisions of the Provident Funds Act, 1925, or of section 60(k) of the Civil Procedure Code.

*Veerchand Nowla v. B. B. and C. I. Railway Company (1), Hindley v. Joynarain Marwari (2) and Secretary of State for India v. Raj Kumar Mukerjee (3), referred to. Devi Prasad v. Secretary of State for India in Council (4) and Jagannath v. Tara Prasanna (5), followed.*

\* Civil Revision No. 285 of 1926.

(1) (1904) I. L. R., 29 Bom., 259. (2) (1919) I. L. R., 46 Cal., 962.  
(3) (1922) I. L. R., 50 Cal., 347. (4) (1923) I. L. R., 45 All., 554.  
(5) (1923) I. L. R., 3 Pat., 74.

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The Government Advocate (Mr. *U. S. Bajpai*), for the petitioner.

Messrs. *G. L. Agarwala*, *S. B. Johri* and *G. S. Ghatak*, for the opposite parties.

KENDALL, J. :—This is an application under section 25 of the Small Cause Courts Act for the revision of an order of the Judge of the Small Cause Court of Bareilly, directing the attachment of deposits amounting to Rs. 450 in execution of a decree against one Gulzari Lal. The application however is made on behalf of the Secretary of State.

Gulzari Lal was a clerk in the Collector's office in Pilibhit and he was a subscriber to the General Provident Fund. He has now retired. A decree was obtained against him by one Har Charan Das in the Small Cause Court of Bareilly and it is in the execution of this decree that the present question has arisen. The Judge has complied with the decree-holder's application to attach money lying to the credit of Gulzari Lal in the General Provident Fund, and an objection was made by the Pay and Accounts Officer, United Provinces, that the deposit was not liable to attachment. That objection has, however, been overruled by the court below.

It has been pointed out by the learned Government Advocate that under section 2 of the Provident Funds Act, 1925, a compulsory deposit "is not, until the happening of some specified contingency, repayable on demand otherwise than for the purpose of the payment of premia, etc.", and under section 3(1) of the same Act a compulsory deposit "shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any civil, revenue or criminal court in respect of any debt or liability incurred by the subscriber or depositor." Under clause (k) of section 60 of the Civil Procedure Code, again, "all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897, for

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the time being applies, in so far as they are declared by the said Act not to be liable to attachment" are specifically exempted from attachment.

Five cases have been cited to support the contention that the compulsory deposit is not liable to attachment. In the cases of *Veerchand Nowla v. B. B. and C. I. Railway Company* (1), *Hindley v. Joynarain Marwari* (2) and *Secretary of State for India v. Raj Kumar Mukherjee* (3), the attachment was disallowed. These three cases have been distinguished from the present one by the Judge of the court below on the ground that the provident fund concerned was a Railway Provident Fund and was not the General Provident Fund. It is argued here on behalf of the decree-holder that there is a special rule of the General Provident Fund which renders a compulsory deposit in that Fund liable to attachment. But it may be said here that these three decisions are by no means without value in the present case, for they show that the sanctity attached by the Act to compulsory deposits as defined in the Act does not cease with the retirement of the contributor, or even at his death. The decisions relate to the period previous to 1925, which is the year of the current Act. But this is not a matter of any importance, as there has been no change in the Act of 1925 which affects any of the considerations in the present case.

Of the two other decisions that have been referred to in argument the lower court has mentioned the case of *Devi Prasad v. Secretary of State for India in Council* (4), but has refused to follow it on the ground that there is nothing in the published report to show whether the deposits concerned in that case were governed by the General Provident Fund rules or by some other rules. I have sent for the paper book in the case and find that the contributor concerned was a clerk in the

(1) (1904) I. L. R., 29 Bom., 259.

(2) (1919) I. L. R., 46 Cal., 962.

(3) (1922) I. L. R., 50 Cal., 347.

(4) (1923) I. L. R., 45 All., 554.

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Accountant General's office and that he had been a subscriber to the General Provident Fund. If this fact had been known to the Judge he would have been bound to follow that decision. The Patna case of *Jagannath v. Tara Prasanna* (1) undoubtedly refers to a contributor to the General Provident Fund. It was suggested by Mr. *Girdhari Lal Agarwala* on behalf of the decree-holder that it may have been a case in which the contributor was still in service. From the fact, however, that the judgement mentions that the contributor *was* a nazir in the civil court, and that rule 10 of the rules regulating the General Provident Fund was discussed and criticised, it is apparent that the contributor had retired, for rule 10 relates to "withdrawals on retirement".

This brings me to rule 10 on which the decree-holder's whole case is based. That rule is to the following effect:—

"The amount which accumulates to the credit of a subscriber in permanent employ shall, when he quits the service, become his property and shall be handed over to him unless the Accounts Officer has received notice of an attachment, assignment or encumbrance affecting the disposal of the amount or any portion of it. Should such notice have been received the Accounts Officer shall hand over to the subscriber only that portion of the amount which is not affected by the attachment, assignment or encumbrance and shall obtain the orders of the Government of India in the Finance Department as administrators of the Fund regarding the disposal of the balance."

It is argued that this rule legalises the attachment of the amount which accumulates in the General Provident Fund, in spite of the fact that under section 3 of the Act compulsory deposits are protected, in spite of clause (k) of section 60 of the Civil Procedure Code, and in spite of the decisions of the Courts which have been

(1) (1923) I. L. R., 3 Pat., 74.

already quoted to show that this protection extends to the period after the retirement of the contributor and even after his death.

The effect of the rule is not altogether clear. The argument is that according to it the compulsory deposit becomes automatically the property of the contributor on his retirement and that it is payable on demand. The rule, however, provides that the Accounts Officer shall not hand it over if notice has been received of attachment, assignment or encumbrance until the orders of the administrators of the Fund have been received. Clearly then the deposit does not become absolutely the property of the contributor on his retirement, nor is there any express provision by which the deposit is rendered liable to attachment. The utmost that can be said for the decree-holder is that the rule does contemplate that a notice of attachment may be received, and that it may be possible to infer from this that such a notice would be a legal notice. The lower court has requested the Pay and Accounts Officer to "comply with rule 10 of the General Provident Fund rules and send the amount of deposits, Rs. 450, here." But the rule does not authorize the Accounts Officer to comply with a notice of attachment or to send the amount to the attaching court, but merely to obtain the orders of the administrators of the Fund. The rule in short appears to be merely a rule of procedure directing the Accounts Officer how to proceed on receipt of a notice of attachment. It does not by its terms legalize a notice of attachment. Even if the express intention of the rule was to legalize an attachment, it is certainly not clear to me that the framers of the rule had any authority to override the provisions of the Act. Presumably the rules are framed by the Government of India, but it does not appear to me that they have statutory authority. It has been argued that statutory authority to these rules

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has been given by sub-section (4) of section 96B of the Government of India Act. That sub-section confirms "all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority relating to the Civil service of the Crown in India." But it is certainly open to question whether this expression is sufficiently wide to cover rules regulating the General Provident Fund. I am decidedly of opinion that it is not, but it is not necessary for me to decide the point here because, as I have already said, the rule itself does not appear to me expressly to authorize the attachment of these compulsory deposits or to revoke any statutory provision relating to them.

I consider, therefore, I am justified in following the authority of the cases of *Devi Prasad v. Secretary of State for India in Council* (1) and *Jagannath v. Tara Prasanna* (2) and holding that the deposit in question is not liable to attachment. I therefore allow the application with costs and set aside the order of the court below directing the deposits to be attached.

## APPELLATE CIVIL.

*Before Mr. Justice Banerji and Mr. Justice King.*

March, 18. EJAZ AHMAD AND OTHERS (DEFENDANTS) *v.* SAGHIR BANO AND OTHERS (PLAINTIFFS) AND AKBARI BEGAM AND OTHERS (DEFENDANTS).\*

*Civil Procedure Code, section 11—Partition suit—Res judicata as between co-defendants—Conflict of interest inter se unnecessary.*

In a partition suit, if, for the purpose of giving relief to the plaintiff, a question has to be decided as between the different parties whether they are arrayed as plaintiffs or defendants,

\* Second Appeal No. 1243 of 1926, from a decree of P. C. Plowden, District Judge of Bareilly, dated the 29th of April, 1926, confirming a decree of Lakshmi Narain Miera, Munsif of Haveli, dated the 21st of September, 1925.

(1) (1923) I. L. R., 45 All., 554. (2) (1923) I. L. R., 3 Pat., 74.