

## FULL BENCH.

1930.  
November,  
12.

*Before Mr. Justice Wazir Hasan, Chief Judge, Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Neth Srivastava.*

RAM BAHADUR SINGH (DEFENDANT-APPELLANT) v. RAM NATH LAL AND ANOTHER (DEFENDANTS-RESPONDENTS).\*

*Civil Procedure Code (Act V of 1908), order XXI, rules 58 and 63—Execution of decree—Attachment in execution—Objection to attachment not pressed and consequently dismissed—Suit not brought under order XXI, rule 63, effect of—Order dismissing objection under order XXI, rule 58, whether covered by order XXI, rule 63—Limitation Act (IX of 1908), Schedule I, Article 11, applicability of.*

*Held*, that an order passed by the executing court on an objection filed under order XXI, rule 58, Schedule I of the Code of Civil Procedure, which is not pressed subsequently and is therefore dismissed, is an order covered by order XXI, rule 63, Schedule I, of the Code of Civil Procedure, and if the objector fails to sue to establish the right which he claims within one year as provided by Article 11 of the Limitation Act, 1908, the order shall be conclusive.

Rule 63 of order XXI, of the present Code unlike section 283 of the old Code covers cases in which there has been no investigation. The rule applies to every order made against a party to a claim preferred or an objection made under rule 58, even if the order was made for default and without investigation. *Nagendra Lal Chowdhury v. Fani Bhusan Das* (1), *Satindra Nath Banerjee v. Shiva Prosad Bhakat* (2), *Machi Raju Venkataratnam v. Sri Raja Vadrevu Ranganayakamma Zamindarini Garu* (3), *Gulab v. Mutsaddi Lal* (4), *Maung Pya v. Ma Hla Kyu* (5), *Nawal Kishore v. Khiyali Ram* (6), *Kedar Nath v. Sukh Nath Singh* (7), and *Damodar Dass v. Pearcey Lal and others* (8), referred to and relied on. *Ramuswami Chettiar v. Mallappa Reddiar* (9), and *Abdul Kadir Sahib v. Somasundaram Chettiar* (10), referred to. *Lingama Naidu v. The Official Receiver, Madura* (11), dissented from.

\*Second Civil Appeal No. 29 of 1930, against the decree of Pandit Kishen Lal Kaul, Subordinate Judge of Fyzabad, dated the 28th of October, 1929, reversing the decree of M. Muniruddin Ahmad Kirmani, Munsif of Fyzabad, dated the 18th of July, 1929.

- |                                  |                                   |
|----------------------------------|-----------------------------------|
| (1) (1918) I.L.R., 45 Cal., 785. | (2) (1921) 26 C.W.N., 126.        |
| (3) (1918) I.L.R., 41 Mad., 985. | (4) (1919) I.L.R., 41 All., 629.  |
| (5) (1923) I.L.R., 1 Rang., 481. | (6) (1929) I.L.R., 11 Lah., 569.  |
| (7) (1921) 24 O.C., 218.         | (8) (1930) 28 A.L.J., 1322.       |
| (9) (1920) I.L.R., 43 Mad., 760. | (10) (1922) I.L.R., 45 Mad., 827. |
|                                  | (11) (1928) 110 I.C., 511.        |

1930.

RAN BAHADUR SINGH  
v.  
RAM NATH LAL.

THE case was originally heard by a Bench consisting of the Hon'ble the Chief Judge and Justice Raza who referred a question of law involved in the appeal to a Full Bench for decision. Their referring order is as follows :—

HASAN, C. J. and RAZA, J. :—This appeal involves an important question of law which we think should be decided by a Full Bench.

The property in suit was purchased by the plaintiff, Salig Ram, at an auction-sale held in execution of certain simple money decrees which Salig Ram had obtained against Beni Singh, defendant No. 2 in this suit. During the progress of the execution proceedings Ran Bahadur Singh, appellant, who was defendant No. 1 in the trial court had objected to the attachment of the property on the ground that he had acquired the same under a pre-emption decree of the 4th of November, 1926. The objection purports to have been made under rule 58 of order XXI of the Code of Civil Procedure. On the 19th of November, 1927, the objection was disposed of by the court in the following order :—“The pleader for the objector stated that the objector shall seek a remedy by a regular suit. The objection is struck off as it is not pressed.” In the formal order prepared in pursuance of the above, it was recorded that the objection was dismissed. Salig Ram having failed to obtain mutation of the property in question on the basis of his title under the auction-sale brought the suit, out of which this appeal arises, for possession of the same property. The lower appellate court has held that the order of the 19th of November, 1927, disposing of Ran Bahadur Singh's objection to the attachment of the property in question debars him from questioning the plaintiff's title as Ran Bahadur Singh failed to institute a suit within one year from the date of the order under the provisions of rule 63 of order XXI of the Code of Civil Procedure. The question therefore which we refer to the Full

1980.

---

 RAN BAHADUR SINGH  
 v.  
 RAM NATH LAL.

Bench is as to whether the provisions of rule 63 of order XXI of the Code of Civil Procedure operate as a bar against Ran Bahadur Singh from disputing the plaintiff's title to the property in question. We accordingly make the reference under section 14 of the Oudh Courts Act, 1925.

Mr. *St. G. Jackson*, for the appellant.

Mr. *Haider Husain*, for the respondents.

HASAN, C. J. :—As both of my learned brothers propose to give an answer in the affirmative to the question referred to the Full Bench I do not wish to press my dissent. I would, however, indicate briefly the line of reasoning which I personally venture to think is correct.

In *Sardhari Lal v. Ambika Pershad* (1), their Lordships of the Judicial Committee decided that an order made under section 283 of the Code of 1882 was conclusive if it was made after an investigation directed by section 278 though "the Code does not prescribe the extent to which the investigation should go". This result clearly emerged from the language employed by the Legislature in enacting the provisions of section 283 of that Code. That section stood as follows :—

"The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive."

The only possible interpretation which could be placed on section 283 was that such an order was conclusive as was an order passed under section 280, 281 or 282 and no other order had that effect. But section 278 which was not enumerated amongst the sections mentioned in section 283 "provided that no such

(1) (1888) L.R., 15 I.A., 123.

1930. investigation shall be made where the court considers that the claim or objection was designedly or unnecessarily delayed'. In my opinion the new rule 63 of order XXI in the Code of 1908 by eliminating the reference to sections 280, 281 and 282, that is, rules 60, 61 and 62, brings in within the scope of that rule an order by which a claim or an objection is disposed of without investigation as being designedly or unnecessarily delayed. This, in my opinion, is the only change in the law and no more.

RAN BAHADUR SINGH  
"RAM NATH LAL.

Hasan, C. J.

There may be two ways of approaching the interpretation of rule 63. One would be to treat it as an independent and isolated rule and the other as a rule prescribing the sequel to the preceding rules. In my judgment the latter method should be preferred. According to this view "a claim or an objection. . . preferred" means a claim or an objection preferred under rule 58. Similarly "an order . . . made" means an order made under rule 58, 60, 61 or 62. An order made under the first-mentioned rule will be an order dismissing the claim or objection as being designedly or unnecessarily delayed and an order made under any of the other rules will be an order where a claim or an objection has been investigated. Rule 58 prescribes condition precedent in the direction that "the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit". With these few words I agree that the answer be given in the affirmative.

RAZA and SRIVASTAVA, JJ. :—This is a reference to the Full Bench under section 14 of the Oudh Courts Act, 1925. In order to appreciate the question to be decided it is necessary to state the circumstances out of which this suit has arisen, so far as they are material to the appeal before us.

1980.

---

 RAN BAHADUR SINGH  
 v.  
 RAM NATH LAL.

*Raza and  
 Srinastava,  
 JJ.*

Salig Ram plaintiff (since deceased and now represented by Ram Nath and others) had purchased the property in suit at an auction-sale held in execution of his money decrees which he had obtained against Beni Singh *alias* Ribai Singh (defendant No. 2 in this suit). Beni Singh had executed a sale deed in respect of the property in suit in favour of his brother's widow, Musammat Phulsara (defendant No. 3). Ran Bahadur Singh (defendant No. 1) brought a pre-emption suit in respect of the property in suit and his claim was decreed on the basis of a compromise on the 4th of November, 1926. Salig Ram attached the property in suit in execution of his simple money decrees and the property was duly attached by order of the executing court. During the progress of the execution proceedings Ran Bahadur Singh (defendant No. 1) objected to the attachment of the property on the ground that he had acquired the property under the pre-emption decree mentioned above. The objection was made under order XXI, rule 58 of the Code of Civil Procedure with the prayer for release of the property from attachment and sale. This objection was eventually disposed of on the 19th of November, 1927. The executing court disposed of the objection in the following order:—

“The pleader for the objector stated that the objector shall seek a remedy by a regular suit. This objection is *‘struck off, as it is not pressed.’*”

In pursuance of the order mentioned above, a formal order was prepared under order XLIII, rule 3, Schedule I, of the Code of Civil Procedure (see rule 3 added by the Oudh Chief Court). It was recorded in the formal order that the objection *was dismissed*. Salig Ram (plaintiff) having purchased the property in suit at the auction-sale applied for mutation on the basis of his title under the auction-sale. His application was opposed by Ran Bahadur

1930.  
 RAN BAHADUR SINGH  
 v.  
 RAM NATH LAL.

*Kaza and  
 Srivastava,  
 JJ.*

Singh (defendant No. 1). The application was dismissed by the Revenue Court on the 7th of May, 1928. The present suit was then brought by the plaintiff Salig Ram on the 18th of March, 1929. The suit was dismissed by the first Court on the 18th of July, 1929. The plaintiff's appeal was however allowed by the learned Additional Subordinate Judge of Fyzabad. The lower appellate court has decreed the plaintiff's claim for possession of the property in suit, holding that the order of the 19th of November, 1927, disposing of Ran Bahadur's (defendant No. 1's) objection to the attachment of the property in suit debars him from questioning the plaintiff's title, as Ran Bahadur Singh failed to institute a suit within one year from the date of the order under the provisions of rule 63 of order XXI of the Code of Civil Procedure.

Ran Bahadur Singh (defendant No. 1) has filed this appeal questioning the correctness of the finding of the lower appellate court.

The question to be decided in this reference is thus as follows :—

“Whether an order passed by the executing court on an objection filed under order XXI, rule 58, Schedule I of the Code of Civil Procedure, which is not pressed subsequently and is therefore dismissed, is an order covered by order XXI, rule 63, Schedule I of the Code of Civil Procedure.”

The appellant's learned counsel has contended before us that the order in question should be taken to be an order permitting Ran Bahadur Singh, the objector, to withdraw his objection. In our opinion this contention is not well founded. There is nothing in the order (exhibit 13) to suggest that Ran Bahadur Singh desired to withdraw his objection or that the court allowed him to withdraw the same. The words “struck off” used in the order do not mean that the

objection was to be treated as if it had been allowed to be withdrawn. It should be borne in mind that it was expressly recorded in the formal order (exhibit 14) which was prepared in pursuance of the order in question that the objection was dismissed. This shows clearly what the executing court meant by the expression "struck off" used in the order in question (exhibit 13). The objector's pleader had stated of course that the objectors would seek remedy by a regular suit, but this does not mean that the objector asked the court to allow him to withdraw the objection or to treat the objection as if it had never been made. It may be that the objector intended to bring a suit, but surely the court did not permit him to withdraw the objection so as to entitle him to bring the suit at any time he liked. The fact is that Ran Bahadur Singh, objector (defendant No. 1), did not press his objection and so the court dismissed it by saying, let it be "struck off". Ran Bahadur Singh (defendant No. 1) never instituted any suit to establish the right which he claims to the property in dispute after the dismissal of his objection. He allowed the property in suit to be sold as the property of the judgment-debtor Beni Singh *alias* Ribai Singh (defendant No. 2) and never questioned the validity of the sale before the present suit was brought by Salig Ram.

The crucial question is this: Whether or not the order in question was made "against" the objector (Ran Bahadur Singh)? The appellant's learned counsel contends that the order in question is not an order "against" the objector (Ran Bahadur Singh, defendant No. 1) within the meaning of order XXI, rule 63 of the Code of Civil Procedure, as his claim or objection was not investigated by the court as required by order XXI, rule 58, Schedule I, of the Code of Civil Procedure. We are not prepared to accept this contention. Rule 63 of order XXI, is in the following terms:—

1930

---

 RAN BAHADUR SINGH  
 v.  
 RAM NATH LAL.

*Raza and  
 Srivastava,*  
 JJ.

1930.

RAN BAHADUR SINGH  
v.  
RAM NATH  
LAL.

*Raza and  
Srivastava,*  
JJ

“Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, the order shall be conclusive.”

This rule of the present Code (Act V of 1908) corresponds to section 283 of the old Code (Act XIV of 1882). Rules 58, 59, 60, 61 and 62 of the present Code correspond to sections 278, 279, 280, 281 and 282 of the old Code. Section 283 of the Code of 1882 ran as follows :—

“The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.”

Rule 58 deals with investigation of claims to and objections to attachment of, attached property. Rule 59 deals with evidence to be adduced by claimant. Rule 60 deals with release of property from attachment upon investigation. Rule 61 deals with disallowance of claim to property attached. Rule 62 deals with continuance of attachment subject to claim or encumbrance. The present Code makes no important or noticeable changes in sections 278 to 282 of the old Code. Rule 63 of order XXI of the present Code is, however, much wider in its scope than the corresponding section 283 of the Code of 1882. The specific reference to the previous sections or rules has been omitted. A corresponding change has also been made in the Limitation Act, 1908, Schedule I, Article 11. Rule 63 of order XXI, of the present Code unlike section 283 of the old Code covers cases in which there has been no investigation. The rule applies to every order made against a party to a claim



preferred or an objection made under rule 58, even if the order was made for default and without investigation—See *Nagendra Lal Chowdhury v. Fani Bhusan Das* (1); *Satindra Nath Banerjee v. Shiva Prasad Bhakat* (2); *Machi Raju Vankataratnam v. Sri Raja Vadrevu Ranganayakamma Zamindarini Garu* (3); *Gulab v. Mutsaddi Lal* (4); *Mauny Pya v. Ma Hla Kyu* (5); *Nawal Kishore v. Khiyali Ram* (6); and *Kedar Nath v. Sukh Nath Singh* (7). We should like to note that in the Rangoon case *Maung Pya v. Ma Hla Kyu* (5), referred to above, the order passed in the removal of attachment case was a dismissal for want of prosecution. It was held very recently in the case of *Damodar Dass v. Pearcey Lal and others* (8) that every order allowing or disallowing an objection preferred under order XXI, rule 58, no matter made on what grounds and on the merits or not, must be treated as one contemplated by order XXI, rule 63, and a suit to set aside that order must be brought within one year of its date. When the property is attached in execution of a decree it is not absolutely necessary for the claimant to file an objection under order XXI, rule 58 of the Code of Civil Procedure. The object of that rule is not to deprive the claimant of the remedy by suit, but to give him a more speedy and summary remedy. If he avails himself of that remedy and an order is made against him by the executing court, he may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive. If he chooses to take advantage of a summary procedure he must suffer its disadvantages as well. Article 11 of the Limitation Act, 1908, speaks of suit by a person against whom an “order under the Code of Civil Procedure, 1908, on a claim preferred to or an objection made to the attachment of property attached in execution of a decree” has been made. Thus the

1930.

RAN BAHADUR SINGH  
v.  
RAM NATH LAL.

Raza and  
Srivastava  
JJ.

(1) (1918) I.L.R., 45 Cal., 785.

(2) (1921) 26 C.W.N., 126.

(3) (1918) I.L.R., 41 Mad., 985.

(4) (1919) I.L.R., 41 All., 623.

(5) (1923) I.L.R., 1 Rangoon, 481.

(6) (1929) I.L.R., 11 Lah., 369.

(7) (1921) 24 O.C., 213.

(8) (1930) 28 A.L.J., 1322.

1930.

RAN BAHADUR SINGH  
v.  
RAM NATH LAL.

Raza and  
Srivastava  
Jj.

article relates to any order passed in claim proceedings and is not restricted to an order passed under order XXI, rules 60 to 62. The article applies to all orders in claim proceedings whether they are passed after full investigation under the claim section of the Code or are passed without any investigation at all. If an objection is filed under order XXI, rule 58, and the court refuses to investigate the claim (rightly or wrongly) and refuses to release the property from attachment and dismisses the objection, it cannot be said that the order was void or without jurisdiction. The order may be wrong, but a court has jurisdiction to decide wrong as well as right. If the order is "against" the claimant, he must sue to establish the right which he claims to the property in dispute within the time provided by law, and if he fails to do so, the order shall be conclusive. As pointed out in the Madras case—*Muchi Raju Venkataratnam v. Sri Raju Vadrevu Ranganayakamma Zamindarini Garu* (1). "When a claim is preferred, the usual prayer is that the attachment should be raised as the property does not belong to the judgment-debtor but belongs to the claimant. On the presentation of such a petition, if the order is not that the property be released from attachment, it must be taken to be an order "against" the claimant."

The appellants learned counsel has referred to the rulings in *Ramaswami Chettiar v. Mallappa Reddiar* (2), and *Abdul Kadir Sahib v. Somasundaram Chettiar* (3). We think these rulings are not in point. The question which we have to decide in this case was not raised and decided in those cases. He has referred also to some cases reported in the Indian Cases Reports. We do not think it necessary to refer to them in detail. The strongest case in favour of the appellant is the case reported in *Lingama Naidu v. The Official Receiver, Madura* (4). It was of course

(1) (1819) I.L.R., 41 Mad., 958 (997.)

(2) (1920) I.L.R., 43 Mad., 760.

(4) (1928) 110 I.C., 511.

(3) (1922) I.L.R., 45 Mad., 827.

held in that case that order XXI, rule 63 of the Code of Civil Procedure has no application to cases where a claim has not been disposed of on the merits or rejected as being too late. All other modes of disposal are treated as modes of disposal which do not entail on the party on whom an adverse order is made the duty of filing a suit to set it aside. Accordingly where a claimant applies to withdraw the claim petition, and it is dismissed, a suit filed more than a year from the date of the order is not barred under order XXI, rule 63 of the Code of Civil Procedure. We should like to note that no application to withdraw the claim petition was filed by the claimant in the case before us. We have already considered this matter. Some observations in this decision appear to help the appellant, of course, but with all respects to the learned Judges who decided that case, we are not prepared to hold that order XXI, rule 63 of the Code of Civil Procedure has no application to cases where a claim has not been disposed of on the merits or rejected as being too late. In our opinion the order which is passed by the court under the circumstances mentioned above would attract the provisions of order XXI, rule 63 of the Code of Civil Procedure.

Hence we are of opinion that the question which has been referred to us for decision should be answered in the affirmative and against the appellant.

By THE COURT :—The question is answered in the affirmative.

1930.

---

 RAN BAHADUR SINGH  
 v.  
 RAM NATH LAL.

*Raza and  
 Srivastava  
 JJ.*