

I would answer the third question in the affirmative, and the fourth in the negative.

SEN, J.—I agree with the judgment of the learned Chief Justice

DUNKLEY, J.—I agree with the judgment of the learned Chief Justice.

1931
 N.A.V.R.
 CHETTYAR
 FIRM
 v.
 MAUNG
 THAN
 DAING.
 MYA BU, J.

APPELLATE CIVIL.

Before Mr. Justice Carr.

M.S.M.M. FIRM

v.

MAUNG SEIN.*

1931
 June 24.

Attachment before judgment—Property outside jurisdiction—Investigation of claims—Attaching Court's jurisdiction—Civil Procedure Code (Act V of 1908), s. 136, O. 38, rr. 5, 8.

Under O. 38 of the Civil Procedure Code, a Court has power to order attachment before judgment of property which is outside the local limits of its jurisdiction. The attachment should be effected in the manner provided in s. 136 of the Code.

A.R.A.R.S.M. Chetty v. S.M.R.M. Chetty, 4 B.L.T. 89—approved.

Bhai Khan v. Des Raj, 2 U.B.R. (1914-16) 16—dissented from.

The Court which orders the attachment has jurisdiction to investigate claims and objections thereto.

Quære: Whether the Court that actually effects such attachment under s. 136, can also entertain objections to the attachment.

Guha for the appellant.

Talukdar for the respondent.

CARR, J.—This case, in itself not very important, raises some interesting questions. The present appellant firm having filed in the Township Court of Yedashe, Toungoo District, a suit against Ma Mi and another, applied for attachment before judgment of

* Civil Second Appeal No. 82 of 1931 from the judgment of the District Court of Toungoo in Civil Appeal No. 86 of 1930.

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six buffaloes and three carts alleged to belong to the defendants and to be at a village in the Lewe Township of the Pyinmana District. The Township Judge, displaying the lack of care and attention which is far too often characteristic of our Courts in dealing with interlocutory or subsidiary matters, merely ordered "issue warrant of attachment". He does not seem to have taken the trouble to read Order 38, Rule 5, to see how he ought to proceed, or to have considered whether he had jurisdiction to attach property outside the territorial jurisdiction of his Court, or, if he had such jurisdiction, how the attachment should be effected. His proceedings, therefore, were highly irregular. He ignored the plain provisions of Order 38, Rule 5, and of section 136 of the Code of Civil Procedure. The warrant issued by him, instead of being sent, as required by section 136, to the District Court of Pyinmana, was sent direct to the Township Court of Lewe, and was executed by that Court.

The present respondent then applied in the Township Court of Yedashe for the removal of the attachment, and was successful. Thereupon the appellant filed this suit under Order 21, Rule 63, for a declaration. It has been dismissed by both Courts below, which have held that the Court had no jurisdiction to attach property outside its jurisdiction. They also appear to have held that, that being so, the Court had no jurisdiction to remove the attachment. And they have held further that it follows that Order 21, Rule 63, read with Order 38, Rule 8, does not give a right to sue for a declaration.

On the question of the power of a Court to attach before judgment property outside the local limits of its jurisdiction I am satisfied that the decisions of the Courts below are wrong. The District Judge

followed the decision in *Bhai Khan v. Des Raj* (1) in preference to *A. R. A. R. S. M. Somasundram Chetty v. S. M. R. M. Muthu Vecrappa Chetty* (2) and was right in doing so, because the latter case is not reported in the authorised reports. But neither of these decisions is binding on this Court and in my opinion the second case states the law correctly. I have referred to the original record and find that in the published report the judgment is correctly reproduced. This is a carefully reasoned judgment with all the arguments in which I fully agree. They are very clearly stated and it is not necessary for me to repeat them here.

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In *Bhai Khan's* case (1) I think that the learned Additional Judicial Commissioner did not attach sufficient importance to the fact that the words in section 483 of the Code of 1882, which expressly limited the power of attachment to property within the jurisdiction of the Court, were deleted when the present Code was enacted. He seems also to have overlooked the provisions of section 136, and also the fact that section 46 was a new addition when the present Code was enacted. The fact that by this section (46) the legislature expressly gave the Court which has passed a decree power to attach temporarily property outside its jurisdiction entirely destroys the force of the argument quoted at the top of page 17 of the report.

I find that the Yedashe Court had the power to attach before judgment property in the Lewe Township, though it adopted very irregular procedure in doing so. Having attached the property I think it necessarily follows that it had the power to entertain an application for removal of the attachment and to remove that attachment.

(1) 2 U.B.R. (1914-16) 16. (2) C.R. No. 419 of 1908, Ch. Ct., L.B.; 4 B.L.T. 89.

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Here a question arises whether, when property is attached by a Court which has not local jurisdiction at the place where the property is situated, an application for removal of the attachment should not be allowed to be made in the Court which has actually effected the attachment, whether under section 136 or under section 46. In the particular case now before me there is no very great distance between Yedashe and Lewe, so that although the defendant has had to go to another district to prefer his objection and must therefore have suffered inconvenience that inconvenience is probably not very serious. But it might easily happen that the distance between the attaching Court and the place of attachment might be very great and that in consequence the expense and inconvenience of preferring an objection might be prohibitive. I think that some provision might desirably be made to meet this difficulty. But as the law actually stands I think that there is no doubt that the Court which ordered an attachment has also power to remove that attachment, and that therefore the Township Court of Yedashe acted within its jurisdiction in passing the order of removal.

I would like to add that my remarks above must not be read as a decision that the Township Court of Lewe had not also power to remove the attachment. That question does not arise in this case, and my only object is to call attention to possible difficulties which might desirably be dealt with before they actually arise.

A further question is whether the effect of Rule 8 of Order 38 makes Rule 63 of Order 21 applicable to orders passed on objections to attachments before judgment. In my opinion it does.

Finally the question arises as to the place of institution of this suit. I should like to hold that

the suit must be instituted at Lewe, where the property is situated, but I think that this question is settled by section 20 of the Code. The suit could be instituted at Lewe, where the defendant resides, but under section 20 (c) it may also be instituted where the cause of action arose, and that, I think, was in the Township Court of Yedashe which removed the attachment.

I set aside the judgments and decrees of the Courts below and remand the suit to the Township Court of Yedashe for trial and disposal on its merits. The appellant will be granted a certificate for the refund of the Court-fee paid on this appeal. The other costs in this appeal—advocate's fees three gold mohurs—and the costs in the District Court will be costs in the suit and will follow its result.

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APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Sen.

ABDULLA ABDUL GANY

v.

B. K. CHATTERJEE.*

1931
 July 7.

*Suit for possession—Receiver of property—Auction-purchaser at court sale
 —Party entitled to sue for possession.*

When a sale certificate has been issued to the auction-purchaser at a court sale the person entitled to sue for possession of the property is the auction-purchaser, and not a receiver who had been appointed in the suit or execution proceedings.

Leach and Ganguli for the appellant.

Chari for the respondent.

PAGE, C.J.—This appeal must be allowed.

On the 15th of March 1927 a chettyar firm obtained a mortgage decree against one Po Sin. On

* Civil Miscellaneous Appeal No. 38 of 1931 from the order of the District Court of Myaungmya in Civil Regular No. 95 of 1930.