

CIVIL REVISION.

Before Mr. Justice Dunkley.

VEDNATH SINGH AND ANOTHER

v.

U BA DIN.*

1936
Feb. 26.

Attachment of property—Application for removal of attachment—Summary inquiry—Question of title of person in possession—Civil Procedure Code (Act V of 1908), Order 21, rr. 58 to 63—Revision against summary order—Judgment-debtor a limited company—Transfer of property by company to its director—Agent's authority to transfer—Validity of transaction with director—Necessity of deciding question of title.

In some cases the decision of the question whether the person in possession of the attached property is in possession on his own account or on account of the judgment-debtor depends upon a consideration of the title to the property, and in such cases it is necessary, in a summary inquiry under rules 58 to 62 of Order 21 of the Civil Procedure Code, to decide what is the nature of the title, if any, of the person in possession.

Hriday v. Benole, 34 C.W.N. 254; *Sardhari Lal v. Pershad*, I.L.R. 15 Cal. 521.—*followed*.

A party against whom an order under Order 21, rule 60, is made has a special remedy by way of suit, and the principle is that where a certain and conclusive remedy is open to the aggrieved party the Court will not normally entertain an application for revision. It may, however, do so where the lower Court has failed to exercise the jurisdiction vested in it by law.

The applicants attached in execution of their decree a certain oil well as the property of their judgment-debtor, a limited company. The respondent claimed the property as his own and applied for removal of attachment. The trial Court allowed the claim on the strength of a deed of sale for the well site from the company to the respondent. The applicants asked the Court to consider the question of title of the respondent, but the Court declined to do so on the ground that that could only be done in a regular suit. The deed purported to be executed by a person who described himself as agent of the company but there was nothing to show that he had authority to make the transfer. The respondent was a director of the company and it was not proved that such transfer to a director was in law validly made.

Held, that the trial Court should have considered these questions and come to a decision whether the deed of sale was effectual to pass any title in the oil well to the respondent, and if it did not the respondent was only in possession on behalf of the company.

* Civil Revision No. 467 of 1935 from the order of the Subdivisional Court of Yenangyang in Civil Miscellaneous No. 3 of 1935.

Doctor (with him *Shukla*) for the appellants.
Tun Tin for the respondent.

1936

VEDNATH
SINGHP.
U BA DIN.

DUNKLEY, J.—This is an application under the provisions of section 115 of the Code of Civil Procedure to revise an order made by the sub-divisional Court of Magwe under the provisions of Order XXI, rule 60, of the Code. A party against whom an order under this rule is made has a special remedy by way of suit under rule 63 of Order XXI, and it is a general principle that an application under section 115 will not ordinarily be entertained when there is another certain and conclusive remedy open to the aggrieved party, and on this principle it has repeatedly been held that no application will be entertained to revise an order made under either rules 60, 61 or 62 of Order XXI, although no appeal lies from such order, unless it can be shown that the learned Judge who made the order has in making it failed to exercise the jurisdiction vested in him by rules 58 to 62 of Order XXI. In the present case I am constrained to hold that the learned Judge has so failed to exercise his jurisdiction, and that, therefore, his order is open to revision.

The applicants obtained a decree against the Maung Khin Oil Company, Limited, and in execution of that decree they attached a certain oil-well at Yenangyaung. The respondent, Maung Ba Din, then made an application under Order XXI, rule 58, of the Code of Civil Procedure, for the removal of this attachment on the ground that the oil-well in question belongs to him and has been in his possession on his own account since September, 1932. The learned Subdivisional Judge, before whom the application came for disposal, heard the evidence called

1936
 VEDNATH
 SINGH
 v.
 U BA DIN.
 DUNKLEY, J.

by the parties, and came to the conclusion that Maung Ba Din was in possession of the oil-well and was in possession on his own account and, therefore, allowed the claim and, under the provisions of rule 60, released the oil-well from attachment. He based his decision on a deed of sale, dated the 23rd September, 1932, whereby the Maung Khin Oil Company, Limited, purported to sell this oil-well to Maung Ba Din, and oral evidence showing that Maung Ba Din had been in receipt of the royalties of the well. On behalf of the present applicants he was requested to consider the question whether any title to the well passed to the respondent under this deed of sale, but he declined to do so. In the course of his order he stated :

“The Court must not go into the question of title, but the Court can decide as to whether possession is on behalf of the judgment-debtor or not.”

And later in his judgment he observed, referring to the arguments advanced by learned counsel on behalf of the applicants :

“The questions raised by him can only be considered in a regular suit brought under Order XXI, rule 63, Civil Procedure Code, and not in this case. So I do not quote the rulings cited by him. The question of the validity of the sale deed can only be considered in a regular suit.”

This is a dictum which in most cases would be a correct statement of the law, but in some cases the decision of the question whether the person in possession of the attached property is in possession on his own account or on account of the judgment-debtor depends upon a consideration of the title to the property, and therefore in such cases it is necessary, even in a summary enquiry under rules 58

to 62 of Order XXI of the Code of Civil Procedure, to decide what is the nature of the title, if any, of the person in possession.

In *Sardhari Lal v. Ambika Pershad* (1) their Lordships of the Privy Council observed as follows :

“ * * * * , the Code does not prescribe the extent to which the investigation should go ; and though in some cases it may be very proper that there should be as full an investigation as if a suit were instituted for the very purpose of trying the question, in other cases it may also be the most prudent and proper course to deliver an opinion on such facts as are before the Subordinate Judge at the time, leaving the aggrieved party to bring the suit which the law allows to him.”

In *Hridoy Krishna Kundu v. Benode Behari Bandopadhaya and others* (2), where the person in possession alleged the sale of the attached property to him by the judgment-debtor and it was found that registration of the deed of sale had been refused, it was held that the order of the lower Court releasing the property alleged to have been sold to the claimant should be set aside, and that it was necessary to enquire whether the deed of sale was valid or not. The learned Judge observed :

“ The claimant made his claim to the property in suit on the basis of this deed of sale and it appears now clear that there was no deed of sale such as the law requires in favour of the opposite party. Consequently, it cannot be said that the Opposite Party No. 1 was in possession of this property on his own account. If the deed of sale has not been established or proved, the property must be said to lie where it originally lay, namely, the judgment-debtor.”

On behalf of the respondent two cases have been cited, namely, *Hamid Bakhut Mozumdar v. Bukhtcar Chand Mahto* (3) and *Monmohiney Dasse v. Radha*

(1) (1888) I.L.R. 15 Cal. 521, 526.

(2) 34 C.W.N. 254, 255.

(3) (1887) I.L.R. 14 Cal. 617.

1936
VEDNATH
SINGH
v.
U BA DIN,
DUNKLEY, J.

1936

VEDNATH
SINGH

v.

U BA DIN.

DUNKLEY, J.

Kristo Dass (1), in which it was held that the words "possession of the judgment-debtor or of some person in trust for him," occurring in rule 61, refer to cases in which the possession of a claimant as a trustee is of such a character as to be really the possession of the debtor, and not to cases in which very intricate questions of law may arise, and that if the possession of the person holding the property be on his own account, the fact that the judgment-debtor may have a beneficial interest or some title in it cannot be gone into. But these decisions do not cover a case like the present, where on the facts appearing on the face of the sale deed itself it would appear that the sale deed was invalid to pass any title to the property. In such a case it is plain that the investigating Court must, in order to decide whether the possession of the claimant is possession on his own account or possession in trust for the judgment-debtor, come to a decision as to the validity of the deed of sale whereby the property attached purported to be conveyed from the judgment-debtor to the claimant; for, as observed in *Hriday Krishna Kundu v. Benode Behari Bandoṣadhya* (2), "if the deed of sale has not been established or proved, the property must be said to lie where it originally lay, namely, the judgment-debtor," that is, the property still remains the property of the judgment-debtor and is in the possession of the claimant in trust for and on behalf of the judgment-debtor. The validity of the deed of sale whereby the oil-well in question purports to have been transferred from the Maung Khin Oil Company, Limited, to Maung Ba Din is open to question on the grounds that, although it is sealed with the seal of the company, it is executed by a person who described himself as agent of the

(1) (1902) I.L.R. 29 Cal. 543.

(2) 34 C.W.N. 254, 255.

company, and it has not been established that either in law or in fact this agent had authority to make a transfer on behalf of the company, and further it is admitted that the transferee, Maung Ba Din, is a director of the company, and it has not been shown that this transfer to a director was in law validly made. It is necessary that the learned Subdivisional Judge should consider these points and come to a decision whether this deed of sale was effectual to pass any title in the oil-well ; for if it be held that the deed is invalid, then it follows that Maung Ba Din is in possession of the well in trust for and on account of the Maung Khin Oil Company, Limited, and in that case his application for removal of the attachment must be disallowed. In failing to consider these questions, which were essential to the right decision of the application, the learned Subdivisional Judge failed to exercise a jurisdiction vested in him.

This application in revision is, therefore, allowed, and the order of the Subdivisional Court of Magwe, dated the 9th October, 1935, removing the attachment on oil-well No. 3639, is set aside, and the application of the respondent, Maung Ba Din, for removal of the attachment is remanded to the Subdivisional Court for disposal in accordance with law.

The costs of the present application in revision will abide the result of the application for removal of attachment, advocate's fee in this Court three gold mohurs.

1936VEDNATH
SINGHv.
U BA DIN.DUNKLEY, J.