

PATNA HIGH COURT

Hazari Lal

Vs

Firm Ramjiwan Ramchandra

(Das and Wort ,JJ.)

20.03.1929

JUDGMENT

Das, J.

1. This was a suit by the respondent firm for a declaration "that the properties given below belong to defendant second party and do not belong to defendant first party, that defendant first party does not hold possession thereof, that the aforesaid properties are fit to be attached in Execution Case No. 368 of 1924 aforesaid and that the judgment of the Additional Subordinate Judge passed in objection case is fit to be set aside."

2. The facts are those. The plaintiff firm instituted a suit against Ramlagan and Hazari Lal for recovery of a large sum of money. The suit was dismissed as against Hazari Lal but was decreed as against Ramlagan. The plaintiff firm thereupon attached certain properties said to belong to its judgment-debtor Ramlagan. Hazari Lal thereupon started certain proceedings under the provisions of Order XXI, Rule 58 of the Code of Civil Procedure, the object of which was to have it declared that the properties attached belonged to him and not to Ramlagan. The claim was allowed and the attachment was directed to be withdrawn. Thereupon the plaintiff firm instituted the present suit in substance for a declaration that the disputed properties in fact belonged to its judgment-debtor Ramlagan.

3. The lower Appellate Court has decreed the suit of the plaintiff firm and Hazari Lal appeals to this Court.

4. In my opinion the plaintiff firm misconceived its remedy. Hazari Lal was undoubtedly a party to the suit; and the question raised by him was a question relating to the execution, discharge or satisfaction of the decree. No doubt the suit was dismissed as against Hazari Lal but the Explanation to Section 47 makes it perfectly clear that a defendant against whom a suit has been dismissed must nevertheless be regarded as a party to the suit within the meaning of Section 47 of the Code. As it has been pointed out the distinction between a proceeding under Section 47

and a proceeding under Order XXI, Rule 58 is this that all objections to attachment raised by a party to the suit in which the decree was passed, or his representative, come under Section 47: but objections raised by a third party come under Order XXI, Rule 58. It makes no difference in my opinion that Hazari Lal described his application as an application under Order XXI, Rule 58 of the Code. The application was made to the Court which had complete jurisdiction to deal with the matter under Section 47 of the Code, and I do not agree with the view of the learned District Judge that that Court exercised its jurisdiction wrongly. This being the position the remedy of the plaintiff firm was to carry an appeal from the order of the Court removing the attachment. The suit is obviously barred under the express provision of Section 47 of the Code.

5. Mr. Khurshaid Husnain appearing on behalf of the plaintiff firm asks for leave to withdraw the suit. He informs us that he will now pursue such remedy as may be available to him.

6. The result is that the appeal must be allowed and the suit must be dismissed. There will be no order for costs.

7. The cross-objection is not pressed and is dismissed.

Wort, J.

8. I agree.