

SUCHITRA NAG
v.
COMMISSIONER, SANCHAITA INVESTMENTS

MARCH 10, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Administrative Law : Principles of Natural justice—Attachment of property—Wife claimed to be owner of property—Court allowing attachment considering the case of the husband only—Held, attachment not valid without considering the case of the wife.

The trial court passed a decree against the husband of the appellant. The High Court affirmed the decree passed by the trial court mainly considering the case set up by the husband of the appellant.

The appellant filed objection before the High Court claiming that she was the owner of the suit flat and that she had her own independent right, title and interest in the suit flat de hors her husband. She further claimed that she had no connection with Sanchaita Investments or any of its partners or agents or sub-agents. The High Court dismissed the objections filed by the appellant. Hence, the present appeal.

Allowing the appeal, and remitting the matter back to the High Court for considering and disposing the objections of the appellant, this court

HELD : From the judgment of the High Court, it would appear that the Division Bench had not considered the case set up by the appellant. It mainly considered the case of her husband who had denied the liability and held him liable to the amount claimed by the respondent. While affirming the decree, it would appear that the claim set up by the appellant did not appear to have been even adverted to by the High Court, as while dismissing the appeal filed by the wife, it was stated that it was disposed of in terms of the order passed in the appeal of her husband. [775-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3982 of 1995.

From the Judgment and Order dated 21.7.94 of the Calcutta High

Court in Matter No. 4134 of 1990.

A.S. Nambiar, Chanchal Kr. Dutta, P. Dutta and Mrs. Sarla Chandra for the Appellant.

Gobinda Mukhoty, H.K. Puri, S.K. Puri and Samir Ghosh for the Respondent.

The following Order of the Court was delivered :

Leave granted.

The appellant had filed objections against the impugned order of the Division Bench of the High Court dated July 21, 1994 rendered in matter No. 4134/90. The appellant claimed that she is the owner of the property bearing No. 4F, Nabarog Samabaya Abasan Ltd., 15, Mayfair Road, Calcutta - 700019. She claimed that the said property is not liable for attachment and she had no connection with Sanchaita Investments or any of its partners or agents or sub-agents. She purports to set up her own independent right, title and interest in the said flat *de hors* her husband.

From the judgment it would appear that the Division Bench had not considered the case set up by her. It mainly considered the case of her husband who had denied the liability and held him liable to the amount claimed by the respondent. Accordingly the decree as passed by the trial court was affirmed. While affirming the decree, it would appear that the claim set up by the appellant did not appear to have been adverted to. While dismissing the appeal, there was mention that it was disposed of in terms of the order passed in the appeal of her husband.

Under these circumstances, we think that it would be proper to remit the matter to the High Court to consider the purported claim of the appellant with regard to the said flat and to proceed according to law. The appeal is accordingly allowed, by setting aside the order of the Division Bench insofar as it relates to the appellant. The High Court is requested to consider and dispose of the objections according to law expeditiously.

B.K.M.

Appeal allowed.