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## **ATTACHMENT OF PROPERTY IN EXECUTION OF DECREE**

### **Introduction:**

One of the most complicated stages in adjudication of civil disputes is the execution of a decree, which had become final. Several sections in the body of C.P.C., and Order XXI of its schedule, prescribe the detailed procedure to be followed, in the execution of decrees of different kinds. Order XXI Rule 11 CPC, which deals with the application for the execution of a decree. Sub-rule 2 (j) reads as follows:

The mode in which the assistance of the Court is required, whether-

- (i) by the delivery of any property specifically decreed;
- (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
- (iii) by the arrest and detention in prison of any person;
- (iv) by the appointment of a receiver;
- (v) otherwise, as the nature of the relief granted may

require.

Attachment of movable or immovable properties of the judgment-debtors, and sale thereof, are the recognized steps in the execution of decrees, for recovery of money. Attachment, is invariably a step, which precedes the sale. Sections 60 to 64,

Order XXI Rules 41 to 54 of CPC and Rules 242 to 259 of Civil Rules of Practice deal with Attachment of Property. Decree Holder is Dominus litis (person to whom the suit belongs) and he has the right to choose the mode of execution from those available to him. Neither the Court nor the Judgment debtor can force or persuade him to choose a particular mode of execution. Even from the language of Rule 11 of Order 21, it is quite obvious that the decree holder can choose any one of the modes mentioned in sub-rule 2(j) of the said rule. with reference to the relevant provisions of the code on the subject, it is thus obvious that the judgment debtor or the Court cannot insist upon the decree holder to choose a particular mode of execution, Section 51 of C.P.C deals with procedure in execution and powers of the court to enforce execution and various modes. **Hon'ble High Court of A.P. in Gudiwada Munemma v. Jawardhal, 2007 (2) ALT 8** held that,

*"the decree holder can choose any mode of execution of the decree available under the Code, the executing Court cannot insist upon him to follow a particular mode."*

This is also observed in a case between [V. Dharmavenamma v. C. Subrahmanyam Mandadi](#) **(2009) 5 ALD 487**. *The Code lays down various modes of execution.* The numerous rules of O. XXI of the Code take care of different situations, providing effective remedies not only to judgment-debtors and decree-holders but

also to claimant objectors as the case may be.<sup>1</sup> *In the matter of attachment of properties, to satisfy the claims in a suit, two stages are contemplated. The first stage is the one before judgment, dealt with by Order 38 Rule 5 and the second stage is subsequent to the decree, provided for, under Rule 42 of Order XXI.* Sec. 51 C.P.C does not separately specify mere attachment as a mode of execution. So the expression "attachment and sale" in sec. 51 (b) must include both attachment simpliciter and attachment and sale of any property whichever is appropriate.

**Section 51 (b):** i) empowers the court to order execution of a decree by attachment and sale or by sale without attachment of any property. The court is competent to attach the property if it is situated within the local limits of the jurisdiction of the court.

ii) It is immaterial that the place of business of the Judgment-debtor is outside the jurisdiction of the court.<sup>2</sup>

**Section 60 cl. (1) of the Code of Civil Procedure states:** The Properties described in Section 60(1) are liable to attachment and sale in execution of decree whereas the proviso to section 60(1) enumerate certain properties as exempt from attachment.

It is to be noted that many of the items of property mentioned in sec. 60 (1) are properties which are realizable in execution by the

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1 *Ghan Shyam Das Gupta and another Vs Anant Kumar Sinha and others 1991 4 SCC 379*

2  M. A. A. Raoof V. K.G. Lakshmi pathi AIR 1969 Mad 268.

mere process of attachment, no sale being necessary or permissible. As such the words "attachment and sale" in sec. 60 (1) must mean attachment simpliciter as also attachment followed by sale in execution, whichever is appropriate to the particular species of property which is sought to be taken in execution. The primary object of attachment is to give notice to the J.Dr. not to alienate the property to anyone and also the general public not to purchase or in any other manner deal with the attached property in execution proceedings. Attachment and sale are to be read disjunctively where attachment is not a condition precedent. in view of Proviso to Clause (i) of Sec.60(1) of CPC. **In Shaik Noorjahan v. M. Rajeswari 2010(4) ALT 787**, it was held that,

*"when any part of attachment portion of salary of Judgment Debtor was under attachment in execution of decree for a period of (24) months it is exempted from further attachment in execution of same decree even if there is a gap of (12) months after completion of (24) months of attachment."*

**Whether retiral benefits liable to attachment?** The amounts payable in relation to the matters mentioned in clauses (g, h, I, I-a, j, l and o) are exempt from attachment. Hon'ble High Court of A.P. in **Balavenkatagari Rama Muni Reddy vs K.Fakruddin** held that:

*The moment the amount either directly or indirectly paid to the account of the employee or by cash or by transfer at the authorization to somebody it seizes the character of money payable before or after they are actually payable, since already paid.*

### **S.61 CPC: Partial exemption of agricultural produce:**

The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment- debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

**Rules 44 and 45 of Order 21 deal with the attachment of agricultural produce:** This rule applies only when the property is in possession of the Judgment-debtor. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment –

(a) where such produce is a growing crop, on the land on which such crop has grown, or ;

(b) where such produce has been cut or gathered, on the

thrashing floor or place for treading out grain or the like or fodder-stock on or on which it is deposited.

And another copy on the outer door or on some other conspicuous part of the house in which the Judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for grain or in which he is known to have last resided or carried on business or personally worked for grain; and the produce shall thereupon be deemed to have passed into the possession of the Court. The expression 'agricultural produce' is confined to growing crop standing on the land or fodder-stock. The grain separated from chaff ceases to remain agricultural produce.

**Attachment of property, movable and immovable:**

**Rules 42 to 54 of Order 21 deal with the manner in which various properties are to be attached in execution proceedings Other than agriculture produce.**

***Order 21 Rule 42 authorizes the attachment for mesne profits before the amount of such profits has been ascertained.*** From a cursory reading of the provision, it is evident that the obligation to order attachment of any item of property under this, would arise only if there exists a decree, which directs the ascertainment of mesne profits. In the absence of a decree, directing payment of mesne profits, attachment

under Rule 42 of Order XXI, cannot at all be prayed for. Mere pendency of an application for a decree for mesne profits, cannot constitute the basis for filing an application under Rule 42 of Order XXI. It is mandatory that a decree must exist directing payment of mesne profits, before the said provision is pressed into service.

**Attachment of movable property other than agricultural produce in possession of J.Dr:**

Order 21 Rule 43, of the Code of Civil Procedure describes the mode of attachment of movable properties other than agricultural produce in the possession of the judgment- debtor. It says that the attachment of such properties shall be made by the actual seizure, and the attaching officer shall keep the attached property in his own custody or in the custody of one of his subordinates and shall be responsible for the due custody thereof. Attachment under Rule 43 by actual seizure of movables of Judgment-debtor. If they are with some other person the procedure prescribed under Rule 46 should be followed.

**Precept:** A precept under Section 46 CPC is only a request of a Court passing the decree to another Court where the decree holder intends to initiate execution proceedings because of the judgment debtor having attachable properties within the jurisdiction of the Court to which decree is transferred under Order XXI Rule 6 CPC. Upon receipt of the precept the transferee

Court has to attach the property in respect of which precept is received by it and even that attachment remains in force for a period of two months unless that attachment is extended by the Court which had passed the decree.

The relevance of the aforesaid provision is that the application of the decree holder is made to the Court which passed the decree, which issues the precepts to any other Court competent to execute the said decree. As noticed, the expression "the Court which passed the decree" is as per Section 37 of the said Code.<sup>3</sup>

**Whether the FDR's which are with the Bank and on which the Bank claims a general lien can be attached:**

Order 21 rule 46(a) of C.P.C. So far the attachment is concerned, the Banker's lien can not by itself be a bar for such attachment. The Banker as a garnishee, when an attachment notice served, has to appear before the court and obtain suitable directions for safeguard its interest. The court in such a situation has to take in to account of the Banker's lien over the securities or deposits regarding which garnishee notice is issued. This was Observed by the Hon'ble Supreme Court in **Syndicate Bank Vs Vijay kumar and other (1992) 2 SCC 330.**

**Order XXI Rule 47 deals with the attachment of shares in movables.**

**Rule 48 Order XXI of Code of Civil Procedure. Deals with Attachment of salary or allowances of servant of the Government or railway company or local authority.**

So far as the attachment of salary is concerned, "Order XXI Rule 48 of CPC clearly empowers the Court to attach the salary or allowances of a Government servant, whether the judgment-debtor or the Disbursing Officer is or is not within the local limits of the jurisdiction of the Court and the only limitation is that it should be done subject to the provisions of Section 60 of CPC". This was held by the Hon'ble High Court A.P. **Shriram Chits Private Ltd., Tirupathi Branch Vs V.Govinda Swamy and others 2011 (3) AL T 528.**

**Hon'ble Supreme Court in Mohit Bhargava VS Bharat Bhushan Bhargava reported in 2007 4 SCC 795** observed that:

*"Section 38 of the Code which provides that a decree may be executed either by the court which passed it or by the court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the court which passed the decree so long as it is confined to the assets within its own jurisdiction or as*

*authorized by Order XXI Rule 3 or Order XXI Rule 48 of the Code or the judgment debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment debtor. But when the property sought to be proceeded against, is outside the jurisdiction of the court which passed the decree acting as the executing court, there was a conflict of views earlier, But this conflict was set at rest by Amendment Act 22 of 2002 with effect from 1.7.2002, by adopting the position that if the execution is sought to be proceeded against any person or property outside the local limits of the jurisdiction of the executing court, nothing in Section 39 of the Code shall be deemed to authorize the court to proceed with the execution.<sup>4</sup>*

**If cause of action arose in the schedule area, As such, as the decree as well as salary attachment warrant are null and void without jurisdiction.<sup>5</sup> Even in judgment reported in Nagarjuna Grameena Bank and others v. Medi Narayana and others,** the Hon'ble Supreme Court held that,

*"the decree passed by the Civil Court was nullity in relation to cases where whole cause of action arose in the Scheduled Areas."*

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4      □ Mohit Bhargava VS Bharat Bhushan Bhargava, 2007 4 SCC 795

5      D. Anasuya Vs Melichavuru Rajeswara Rao & Another 2014 1 ALD 555

Rule 48A Order XXI of Code of Civil Procedure Attachment of salary or allowances of private employees.

A debt payable within the jurisdiction of the executing court can be attached even though the judgment -debtor is residing outside the jurisdiction of the court. A debt payable outside the jurisdiction of the Court and when the judgment-debtor and a garnishee are outside the jurisdiction of Court, the executing Court is not competent to attach such debt.<sup>6</sup>

The decree holder can proceed against any one of the Judgment Debtors and he is not required to proceed against the principal borrower at the first instance.<sup>7</sup> The Hon'ble High Court in **Guvvala Sudhakara Reddy VS Katamreddy Venugopala Reddy, 2006 2 ALT 632** observed that,

*"Rule 21 of Order 21 CPC empowers the executing Court to refuse simultaneous execution of a decree by two modes, but that is different from the decree holders s right to execute a decree for recovery of money in a particular mode."*

Rule 49 and 50 Order XXI of Code of Civil Procedure Attachment of partnership property and execution of decree against firm.

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<sup>6</sup> The Kerala state civil supplies corp. vs Dhanalakshmi Traders, Grand Merchants and Commission Agents and other 2018 (1) ALD 152.

<sup>7</sup>  Bejjanki Peddiraj Vs M/s. Lavanya Chit Fund Pvt. Limited & Others 2014 4 ALT 163

Under Rule 49 provides that no execution can issue against any partnership property except on a decree passed against the firm or against the partners in the firm as such. The execution under Rule 50 can only be granted where a decree has been passed against a firm. A decree against the firm must perforce be in the firm's name. Under this Rule, execution may be granted against the partnership property. It may also be granted against the partners, in which case the decree-holder may proceed against the separate property of the partners.<sup>8</sup>

Rule 51 Order XXI of Code of Civil Procedure describe the mode of attachment. Where the property is a negotiable instrument not deposited in a Court, not in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.<sup>9</sup>

### **ATTACHMENT OF PROPERTY IN CUSTODY OF COURT OR PUBLIC OFFICER:**

Order 21 Rule 52 CPC is a procedure to enable the parties to agitate their cause or rights without filing separate suits when their property is attached in execution etc. This is to prevent multiplicity of proceedings. The Rule makes it clear that (a) there

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8 □ Ashuthosh vs state of Rajasthan reported (2005) 7 SC 308

9 In Shyam Singh VS Collector, District Hamirpur, U. P. 1993 Supp1 SCC 693

should be an attachment of property pursuant to a decree of a Court; (b) the property that is attached/to be attached is in the custody of a Court or a Public Officer; (c) the attachment shall be made by a notice to such Court or officer and (d) the proviso comes into play if any claim arise between the decree holder and a third party. The said Court shall then determine the same<sup>10</sup>. As per Order XXI Rule 53, a decree-holder can seek attachment of a decree obtained by the judgment-debtor in another case. If it is a case of money decree or a decree for sale in enforcement of a mortgage or a charge, the procedure to be followed is laid down under sub-rule 1 and if it is for any other decree, procedure is laid down in sub-rule 4. Notice is to be given to the judgment-debtor under the attached decree and any payment made by such judgment-debtor thereafter to the decree-holder of the attached decree shall not be recognized by any court so long as the attachment remains in force.

**Order 21 Rule 54 C.P.C. deals with attachment of immovable property:**

One of the modes of enforcing execution of a money decree is by attachment and sale of the property of the judgment-debtor. Attachment of an immovable property is made by an order prohibiting the judgment-debtor from transferring or changing

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<sup>10</sup> □Bhagya nagar plot owners welfare Association, Hyderabad Vs Prime Properties and ors 2018 (3)ALD 688

the property in any way, and all persons from taking any benefit from such transfer or charge. Section 64 of the C.P.C. provides that private alienation of property after attachment is void. An attachment of an immovable property effected in execution of a decree, will continue until the said property is sold and the sale is confirmed, unless it is determined or removed on account of any reasons as per Rule 55, 57 and 58 of order 21.<sup>11</sup>

**Order 21 Rule 54** deals with attachment of immovable property, while Rule 58 deals with adjudication of claims to, or objections to attachment of property. In case, the objections raised in an application under Rule 58 are sustained and accepted, the attachment has to be raised. If the attachment is of the immovable property, no further steps need be taken. The restrictions imposed by the Executing Court, while attaching the property, cease to be operative. However, in case of movable properties, the Court would be under an obligation to hand over or restore the possession of the attached properties, to the successful claimant. Such claimant will be entitled to seek the actual re-delivery or the value thereof. If the properties were not taken custody of, the Court will find itself in quandary, in the matter of redelivery of possession.

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**11** **C.** S. Mani (deceased) by LR C. S. Dhanapalan vs B. Chinnasamy Naidu(deceased)by Lrs 2010 (9) SCC 513.

In the case of a decree for execution against immovable property an attachment under Rule 54 should be made by an order prohibiting the judgment-debtor from transferring or creating encumbrances on the property. Rule 64 of Order 21 charges the Executing Court that it may order attaching of any property to the extent that "such portion thereof as may seem necessary to satisfy the decree would be sold"<sup>12</sup>

**E.P. CLOSED ATTACHMENT TO CONTINUE:** If the order of the executing court while closing the execution, was 'attachment to continue', the attachment would have continued in spite of the closing of the execution proceeding. Even if the executing court had closed the execution, in view of the statutory stay, without any specific order continuing the attachment, the attachment would not have ceased as there was no 'dismissal' of execution under Order 21 Rule 57 of the C.P.C. But if there is an order attachment to continue for a specific period it shall continue, if there is no such direction, the attachment shall be deemed to have ceased.

**Distinction between attachment of movable property and immovable property:**

The basic distinction between attachment of movable property and immovable property is that in the former case application of

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<sup>12</sup> Desh Bandhu Gupta vs N.L. Anand & Rajinder Singh 1994 SCC (1) 131.

physical possession is necessary and in the latter it is not so. The attachment of movable property is legally effected only by actual seizure and possession. Rules from 252 to 257 of Civil Rules of Practice deal with the Procedure to be followed for attachment of movable property. The attachment can be of any movable property of different categories under Rules 42 to 53 or the one of immovable property under Rule 54 of Order XXI C.P.C. Rule 58 does not make any difference between movable and immovable properties.<sup>13</sup>

### **Objections to attachment of property:**

Section 47 and various Rules of Order XXI C.P.C., such as Rules 58, 97, 99 and 100 provide for adjudication of the claims by third parties, in respect of properties, which are attached or sold during the course of execution.

### **Conclusion:**

The Civil Procedure Code 1908, includes many procedures and modes for attachment of different kinds of property. Attachment is the first step and sale of the property will be carried out after attachment. In some cases sale can be done without attachment of the property as well,. This does not make the sale irregular. But the right procedure to be followed is attachment followed by the sale of the property. Section 65 to 73, and Order 21 Rules 64-94 deals with sale of movable and immovable property.

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13 □ Gopana Subba Rayudu Vs Pasupuleti Venkata Ramana & Others 2009 6 ALT 116.