

(2002) 05 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2931 of 2002

Sher Singh

APPELLANT

Vs

State Bank of Patiala and
Another

RESPONDENT

Date of Decision: May 30, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 60(1)

Citation: (2003) 1 BC 311 : (2003) 1 CivCC 677 : (2003) 1 RCR(Civil) 347

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: K.S. Chahal, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

This revision petition is directed against the order dated 16.3.2002 passed by the Civil Judge (Junior Division), Sunam dismissing the objections of the petitioner to the sale conducted on 28.1.2002.

2. Brief facts of the case are that judgment and decree dated 20.2.2001 was passed in Civil Suit No. 83 dated 16.4.2002 decreeing the suit for a total sum of Rs. 3,98,142/-. The decree holder-respondent filed an application seeking execution of the decree. It is during the execution proceeding that attachment orders were issued and the petitioner filed objections under Order XXI Rule 66 of the Code of Civil Procedure, 1908 (for brevity the Code) which were dismissed. Thereafter the attached property was put to auction. Warrants directing sale of the property were received back unexecuted with the report that no one was ready to bid for the property. Thereafter, the bank filed an application under Order XXI Rule 12 of the Code seeking permission of the Court to itself bid at the auction. However, for the reasons best known to the decree holder, the application was withdrawn and the warrants

directing sale of the property were issued again. Sale was conducted on 28.1.2002 to which the JD-petitioner filed objection. The decree holder, however, pleaded for confirming the sale of the land. As per auction proceedings, the attached land of the JD-petitioner measuring 12 kanals 19 marlas were sold for Rs. 3,20,000/- and the auction purchaser deposited on the spot a sum of Rs. 80,000/ i.e. 174th of the total amount. The balance 374th of the amount was deposited in the Court on 31.2.2002 i.e. within the prescribed period of 15 days as provided by order XXI Rule 85 of the Code. The executing Court while dismissing the objection of the JD-petitioner held as under:-

"The withdrawal of application under order 21 Rule 72 CPC filed by D.H. does not vitiate the proceedings. Learned counsel for JD failed to show as to how these facts effect, the auction conducted as per law.

The JD has taken further objection that there was no publication as provided. However, perusal of sale warrants show that munadi was duly effected in the village and thereafter auction was conducted as per rules. Learned counsel for JD failed to point out any infirmity in this regard. Perusal of auction proceedings show that the details of auction proceedings have been given and names of the persons who bid at the auction is also given in the attached list. The names of father of those persons and residences are also given. There is no bar to bid at the auction by the persons resident out of the village. The JD has further pleaded that rate of land is more than Rs. 4 lacs per killa. The D.H. on the other hand has placed on file certified copy sale deed dated 2.6.99 executed by JD Sher Singh whereby he has sold his land at the rate of Rs. 1-172 lac per Killa. JD has further took objection that his residential house is constructed in the disputed land and he has also installed electric motor. However, there is no evidence in this regard. No bill or pass book of electricity or any other process regarding the existence of house has been procured. Moreover, the JD had taken the objection to the application under order 21 Rule 66 CPC but he did not took such objection, at that time. It shows that he has taken these objections only to avoid auction proceedings.

From these facts and my above discussion, the JD has failed to raise any valid objection to the auction proceedings. Learned counsel for DH has also cited 2000(2) CCC Kar 184 Rana Enterprises, Bangalore and Ors. v. State Bank of Mysore, where it has been held that if JD alleges material irregularity or fraud in conducting the sale, the burden of proof is on JD to show that substantial injury resulted due to irregularities and fraud failure to do so, will entail dismissal of the application for setting aside the auction. The ratio of this authority is also applicable to the facts of present case as JD has failed to substantiate, his objections by any positive evidence. The objections of JD to the sale are therefore, dismissed and sale in favour of auction purchaser. Jaswant Singh son of Lakha regarding 12 kanals 19 marlas of land conducted on 28.1.2002 for Rs. 3,20,000/- is hereby confirmed.

3. I have heard Shri K.S. Chahal, learned counsel for the petitioner who has raised a sole contention that u/s 60(1) (c) and (ccc) of the Code as added by the Punjab and Haryana amendment the only dwelling unit of the JD-petitioner cannot be made subject matter attachment of sale. The provision of Section 60(1) (C) and (CCC) of the Code reads as under:-

"60. Property liable to attachment and sale in execution of decree. - (1). The following property is liable to attachment and sale in execution of a decree, namely land, house of other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment to sale, namely:-

(c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to agriculturist or a labourer or a domestic servant and occupied by him;

(ccc) one main residential house and other buildings attached to it (with the material and sites thereof and the land immediately appurtenant thereto and necessary for this enjoyment) belonging to a judgment debtor other than a agriculturist and occupied by him;

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered.

4. Relying on copy of jamabandi for the year 1999-2000 appended as Annexure P-1, the learned counsel has pointed out that a perusal thereof reveals that there is a gair mumkin house and a gair mumkin motor in the area of khasra No. 35(0-15) and khasra No. 26(0-8) and the same cannot be made subject matter of sale or attachment. He has further contended that the executing Court in its impugned order has failed to appreciate this entry of jamabandi and has illegally dismissed the objection of the JD-petitioner.

5. Having heard learned counsel and closely examining his submissions, I am constrained to observe that the same are devoid of any merit.

6. A perusal of Section 60(1)(ccc) of the Code shows that the protection from attachment afforded to the residential house has not been extended to a property specifically charged with the debt sought to be recovered. In other words, if the judgment debtor has created a lien or charge over a residential house then the same shall not be granted the protection postulated by Section 60(1)(ccc) of the

Code. In this regard, the note made in the remarks column of the copy of jamabandi for the year 1999-2000 reveals that khasra No. 35(0-15) which comprised gair mumkin house and Khasra No. 26(0-8) which comprised gair mumkin motor in addition to other parcels of land comprised in various other khasra numbers, the total land being 12 kanals 19 marlas has been under the charge created in favour of State Bank of Patiala Branch Jakhepal. The note in the remarks column reads as under:-

"NOTE: Vide rapat No. 384 dated 20.12.98 land comprised in killa No. 193//25 (1-18), 194//34 (0-4), 35(0-15), 226//5(7-4), 6/1(2-9), 26(0-8) is pledged against consideration of Rs. 2,40,000/- in favour of S.B.Q.P. Branch Jakhepal."

7. Therefore, it is crystal clear that even if it is presumed for the sake argument that there is a house and motor in the land which is subject matter of sale the protection provided by Section 60(1)(ccc) cannot be extended to the JD-petitioner because there is a specific charge created on the property as it postulated by Section 60(1)(ccc) of the Code. It is further pertinent to mention that the JD-petitioner failed to point out to the executing Court that the gair mumkin house situated in the Khasra No. 35 (0-15) is occupied by him. The executing Court has specifically held that the JD-petitioner has failed to produce any evidence which may be sufficient to conclude that the JD-petitioner has a house on the land in question and it is occupied by him. The basic object of these provisions made u/s 60(1) (c) and (ccc) is for the benefit of agriculturists, yet Clause (ccc) withdraws that protection in cases where the property is specifically charged with the debt sought to be recovered.

8. It is also clear that the burden to prove that the house or the building attached constituted his residential house and the same was in his occupation is on the judgment debtor. In this regard, the judgment of the Delhi High Court in *Main Ram and Sons and Anr. v. Elgin Mills Co. Ltd. and Ors.* AIR 1974 (Del) 205 and *Brij Mohan v. Bank of Baroda A.I.R.1988 (Del) 321* can be cited in addition to the judgment of the Karnataka High Court relied upon by the executing Court. Therefore, the petitioner has failed to discharge the onus placed on him and has not been able to show that there is residential house in the land in question which is in his occupation. The revision petition is thus, liable to be dismissed.

9. For the reasons recorded above, this revision petition fails and is dismissed.