

(1952) 12 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : Ex. Second Appeal No. 10 of 1951

Amar Singh Dewa Singh and Another	APPELLANT
Vs	
Mangu Mall Bhagta Mall and Others	RESPONDENT

Date of Decision : 05-12-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Citation : (1952) 12 P&H CK 0025

Hon'ble Judges : Passey, J

Bench : Single Bench

Advocate : Baldev Singh, for the Appellant; Atma Ram, for the Respondent

Judgement

Passey, J.—This second appeal by Amar Singh and Jagat Singh arises out of the order of the District Judge, Bhatinda, reversing the order of the executing Court declaring to hold the Appellants to be personally liable to satisfy the decretal claim of Mangu Mai, Khetamal and Milkhi Ram sought to be enforced by them through execution. A decree against Mukand Singh for Rs. 3185/12/- was passed by the Naib Nazim Dewani Bhatinda in favour of Mangu Mal and two Ors. above mentioned on 29-9-2002. Mukand Singh appealed against that decree and prayed for stay of execution that the decree-holders had taken out. The District Judge allowed stay provided the judgment-debtor gave two sureties for the due performance of the decree in case the appeal failed. On Amar Singh and Jagat Singh offering a joint security bond undertaking in case Mukand Singh failed to pay in Court the amount of the decree, to satisfy the decree from their property of which details were given in the bond, the execution proceedings were stayed.

Mukand Singh's appeal was decided by the District Judge on 12-10-2003 and the decretal amount reduced to Rs. 2087/8/-. The judgment-debtor was also to pay the amount of the penalty paid by the Plaintiffs on their unstamped suit bond and their costs in the appeal together with their costs in the trial. Court proportionate to the amount of the decree maintained by the District Judge. The decree-holder applied for execution in terms of the varied decree against the

judgment-debtor Mukand Singh and his sureties Amar Singh and Jagat Singh and had some land belonging to the sureties/attached. Amar Singh and Jagat Singh lodged/objections against that attachment on the around mainly (a) that the land was ancestral (b) that it having not been pledged in the security bond was not liable to be proceeded against, (c) that the application of the decree-holder did not fall u/s 145, CPC as they shad incurred" no personal liability over and above the three houses specified in the security bond and (d) that the decree-holder must in the first instance exhaust his remedy against the judgment-debtor.

Objection (a) it is conceded by S. Baldev Singh, is not relevant. Objection (d) is equally untenable as the judgment-debtor has failed to pay the decretal amount in Court and the contingency referred to by the sureties has come into existence. Otherwise also unless there is a covenanted safeguard to the contrary or a provision in the decree otherwise, a surety is jointly liable with the judgment debtor and is also individually liable for the satisfaction of the decree and the decree-holder is under no legal restraint before proceeding against the surety to execute the decree against the judgment-debtor alone in the first instance. The only objections of the sureties therefore that, deserve to be considered are (b) and (c) involving the main question whether the above mentioned Surety bond casts any personal liability on the Appellants Amar Singh and Jagat Singh.

The document has to be interpreted in the light of its specific terms, and they convey no more than that the sureties intended to make the property mentioned in the document only liable for the satisfaction of the decree in case the appeal of Mukand. Singh failed and he defaulted to deposit the amount of the decree in Court. The document makes no mention of the property detailed being subject to a mortgage or any other form of charge or encumbrance with incidents of a simple mortgage in which personal liability of the mortgagor is Always presumed nor of the sureties having dertaken to satisfy the decree personally. No that was given expressly or impliedly to the decree-holders to proceed against the sureties other property or their persons. The obligation which the sureties took upon themselves was apparently restricted to the extent of the properties that they can be said to have charged With for the payment of the amount due to the decree-holders under the decree of the District Judge Bhatinda passed on 12-10-2003.

2. I have thus no hesitation in holding that the unsecured property, the land in question, "cannot be attached or sold in enforcement of the surety bond as the sureties had undertaken no personal liability and the scope of the liability had been limited to the property mentioned in the bond. In that view of the facts and law, the decree-holder could not invoke Section 145, CPC as that section could come into play only if the surety"s personal liability had not been excluded. I consequently accept the appeal, reverse the orders of the lower appellate Court and restore that of the executing Court, releasing the land belonging to the sureties. No costs.