
(2009) 01 P&H CK 0182
In the Punjab And Haryana At Chandigarh

Darshan Singh (deceased) through Lrs.	APPELLANT
Vs	
Bank of Baroda and Others	RESPONDENT

Date of Decision : 30-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : (2009) 3 CivCC 568 : (2009) 154 PLR 710 : (2009) 3 RCR(Civil) 583

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Jain, J.—Learned Counsel for the respondent submits that the decree under execution was passed on 13.9.1994. The property in question was sold in execution of the decree on 5.11.2000.

2. The appellant had filed objections under Order 21 Rule 58 of CPC (in short "CPC") on 12.1.2001, after the sale of the property in question.

3. Learned Counsel for the respondent has further submitted that objections filed by the appellant under Order 21 Rule 58 CPC are not maintainable in view of Order 21 Rule 58(1)(a) of CPC.

4. Learned Counsel for the appellant has not disputed that the property in question has been sold prior to the filing of the objections under Order 21 Rule 58 CPC. If that being so, the question is "as to whether the objections under Order 21 Rule 58 of CPC itself are maintainable as alleged by the Counsel for the respondent"? In order to appreciate the contention of the learned Counsel for the respondent, it is necessary to refer to provisions of Order 21 Rule 58 of CPC which is reproduced as under:

58. Adjudication of claims to, or objections to attachment of, property.- (1) where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property

is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained:

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in Sub-rule (2), the court shall, in accordance with such determination:

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) Continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to Sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

5. I have heard learned Counsel for the parties and perused the record.

6. It is apparent from the reading of Order 21 Rule 58(1)(a) of CPC that objections are maintainable only if the property has attached and not sold because the proviso says that no claim or objection shall be entertained where, before the claim is preferred or objection is made, the property attached has already been sold.

7. In the present case, it is an admitted position that the attached property was sold on 5.11.2000 and objections under Order 21 Rule 58 of CPC were filed on 12.1.2001.

8. Thus, in my opinion, the objection from which the present appeal has arisen itself was not maintainable. Thus, I do not find any merit in the present appeal and the same is hereby dismissed. No costs.