
(2004) 04 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 400 of 2004

Devinder Singh

APPELLANT

Vs

Hardev Singh and Another

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90, Order 21 Rule 90(3)

Citation : AIR 2004 P&H 314 : (2004) 138 PLR 40 : (2004) 3 RCR(Civil) 157

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

Bench : Single Bench

Advocate : Avnish Mittal, for the Appellant;

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 227 of the Constitution by a subsequent vendee challenges order dated 29.11.2003 passed by the Civil Judge (Jr. Division), Malerkotla dismissing his objections filed under Order XXI Rule 90 of the Code of Civil Procedure, 1908 (For brevity, "the Code"). The suit of the decree-holder-respondent 1 (for brevity, "DH-respondent 1") Hardev Singh for recovery of Rs. 30,800/- was decreed on 7.1.1983. On 31.7.1991 an attachment order was issued in respect of the property owned by judgment-debtor-respondent 2 (for brevity, "JD-respondent 2"). The property number mentioned was B-IX-370. No objection was taken by the JD-respondent 2 with regard to the attachment or the number of the property given. The only objection raised was that he has sold the property to the objector-petitioner by a sale deed executed and registered on 9.9.1992. However, the objector-petitioner filed objections stating that municipal number of the attached property was B-IX- 145. Therefore, the attachment order cannot be read as attachment in respect of the property purchased by the objector-petitioner.

2. Mr. Avnish Mittal, learned counsel for the objector-petitioner has argued that the new number, namely, B-IX-145 or B-XVII-145 was allotted to the property in dispute in the year 1987 as per the statement made by the OW-4 Harjinder

Singh, House Tax Clerk, Municipal Council, Malerkotla, According to the learned counsel, the attachment order was issued in 1991 in respect of the older number i.e. B-IX-370. As the boundaries of the property are different and attachment order has been issued in respect of half of the property, the attachment order cannot be read in respect of the property described as B-IX/B-XVIII-145, In support of his submission, the learned counsel has placed reliance on the judgment in the cases of M. Veera Raghavaiah v. P. Singha Rao and Ors. 1998(1) CCC 187 (A.P.) and Sahulal and Ors. v. Kunnamma and Ors. 2001(1) C CC 698 (Karnataka) and argued that once the attachment order fails to mention the shops in the attached property, then it has to be held as a material irregularity. Therefore, the objections filed by the objector-petitioner were meritorious and should have been accepted. According to the learned counsel, his case is squarely covered by the judgment of Andhra Pradesh High Court where non-mentioning of rice mill and godown existing in the property was considered to be a material irregularity.

3. Having heard the learned counsel and perusing the order passed by the executing Court, I am of the considered view that there is no material irregularity or fraud in publishing or conducting the sale as contemplated under Order XVI Rule 90 of the Code. The JD-respondent 2 did not raise any objection on 31.7.1991 when the order of attachment was issued either with regard to identity of the property or with regard to his ownership. However, he only stated that he had sold the property to the extent of his share to the objector petitioner. It is well settled that no application to set aside a sale under Order XXI Rule 90(3) of the Code could be entertained on any ground which the objector-petitioner could have taken on or before the date on which the sale was to be held, The auction proceedings were initiated in accordance with law, The objector-petitioner has purchased the property on 9.9.1992 after attachment order dated 31.7.1991 at his own risk and responsibility. The identification of the property was not disputed by the JD-respondent-2. Therefore, I do not find any merit in the instant petition and the same is liable to be dismissed.

4. The judgment of Andhra Pradesh High Court in the case of M. Veera Raghavaiah's case (supra) on which reliance has been placed by, learned counsel for the objector-petitioner proceeds entirely on different facts because in that case eminent construction of godown and rice mill that had been present in the property, were not referred in the auction and sale, whereas in the instant case at the time of attachment, the property numbers were mentioned and no objection was raised by JD-respondent 2 stating that in fact there were shops situated in the attached property. Therefore, no occasion is provided to interfere in the impugned order.

For the reasons stated above, this petition fails and the same is dismissed.