
(1957) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Exn. First Appeal No. 151 of 1955

Firm Ganga Ram Kishore Chand	Vs	APPELLANT
Firm Jai Ram Bhagat Ram		RESPONDENT

Date of Decision : 03-04-1957

Acts Referred:

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

Citation : AIR 1957 P&H 293

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : D.N. Aggarwal, for the Appellant; J.N. Sethi, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—Execution First Appeal No; 151 of 1956 was presented in this Court by Firm Ganga Ram Kishore Chand Judgment-debtor-appellants against firm Jai Ram Bhagat Ram decree-holders. The decree-holders had obtained a decree for recovery of Rs. 6,830.

2. The other appeal Execution First Appeal No. 206 of 1956 was presented in the Court of the District Judge, Ferozepore, from which Court, it has been transferred to this Court In this case a decree was passed in favour of Nauharria Ma! respondent for a sum of Rs. 2,707/ on the 12th January, 1955. As the judgment-debtor in both execution first appeals is the same, and the property under attachment is identical, the two appeals can be conveniently disposed of by the same judgment. The house under attachment is a three storeyed building situated in Moga Mandi. The two upper storeys are admittedly used for residential purposes, and are in the occupation of judgment-debtors and the members of their families. As regards the purpose, to which the ground floor is put, there is a conflict between the respective versions of the parties. The judgment-debtors-appellants maintained, that after the failure of their business several years ago, the ground floor ceased to be used as a shop and the rooms behind were not used as store rooms. After 1948, the judgment-debtors

contend, that even the portion that was at one time being used as shop, was occupied for residential purposes.

3. The judgment-debtors have raised objections to the attachment of this property in execution of the respective decrees on the principal ground that under provisions of Section 60(ccc) of the Code of Civil Procedure; as applicable to Punjab, one main residential house and other buildings attached to it belonging to a judgment-debtor other than an agriculturist and occupied by him are not liable to attachment or sale in execution of a decree.

4. The decree-holders deny the allegations of the judgment-debtors and contend that the house in question cannot be deemed to be residential, house. The decree-holders maintain that the whole of the first floor was being used as a shop and the principal purpose of these buildings was essentially commercial and not residential. Moreover, the building is situated in Moga market, a locality exclusively intended for transacting business.

5. The execution Court framed the following issues :-- . "

1. Whether the property in dispute is not liable to attachment as alleged?
2. Whether the judgment-debtors are estopped from raising these objections?
3. Relief.

As there was no evidence led in support of issue No. 2 it was decided against the decree-holders. The main controversy is with regard to the first issue. The executing Court dismissed the objection and came to the conclusion that the whole of the ground floor had always been used for the purpose of business and the residence was confined to the upper storey and the residential purpose was subservient to the main purpose which was the commercial use of the building.

6. Learned counsel have taken me through the evidence in this case and after perusal of the same, I cannot be persuaded to hold that the ground-floor was being used after 1948 exclusively for residential purposes. The judgment-debtors maintained, that they, and the members of their family, are thirty in all, who are dwelling in this house. . Such business as was carried on, after they met with financial set back in 1948, was on the open site in front of the house. It was also argued, that they used to sell ice during summer but the ice used to be sold in the open. I cannot believe that when they had accommodation on the ground-floor, they, would have been selling ice in the open during summer allowing it to quickly melt in the heat.

There is sufficient material on the record to show that on the failure of judgment-debtors firm, the business was carried on in the names of the sons and other members of the family. No evidence has been led by the judgment-debtors to show what was the source of their livelihood after 1948. It is difficult for me to believe, that the three floors after the failure of the business, were being used for purposes of residence and no business of any kind was being conducted. The

judgment-debtors would not have been so wasteful and if the ground-floor could be used for conducting their business, they would certainly have let it out. I am convinced that the ground-floor continued to be used for business purposes and the shop and the contiguous rooms were not converted into residential house.

7. The question that albeit arises, is, whether when one building with three floors is sub-jected to different uses the ground-floor being Used for commercial purposes and the first and second floors for residential purposes, the judgment-debtor can claim, immunity from attachment or sale, with respect to the entire house under the provisions of Section 60(ccc) of the Code of Civil Procedure. No direct authority has been cited by either counsel in support of his contention. Mr. Jagan Nath Seth has relied mainly upon a Division Bench decision of La-hore High Court in Jhabban Lal v. Muhammad Umar ILR Lah. 359: (AIR 1925 Lah 544 (A). That was a case, in which the dispute arose u/s 5 of the Punjab Pre-emption Act, I of 1913 and the question was, whether a building which was the subject-matter of the suit was a shop or a residential house.

In that case it was found that the building was used for trade for over 20 years and it was situated in an area which "was essentially a busi-ness quarter. The tenants had for the past 10 or 12 years used the ground-floor for storage, and for wholesale trade in commodities of a similar character to those, sold in a number of other premises, similarly situated, in that locality. The upper storey was utilised for the accommodation of customers, dependents and occasionally by the members of the firm who carried on the business on the floor below. It was held in that case, that the purposes of the upper storey were subservient to those of the ground floor and the entire building was deemed essentially a shop and not a residential house and, therefore, not subject to the right of preemption under "section 5 of the Act.

8. Mr. Jagan Nath Seth has also cited another Division Bench decision of Lahore High Court in Lal Chand v. Mst." Eegum ILR Lah. 433: (AIR 1923 Lah 262) (B), in which it was held that the question, whether a building was a shop or a residential house must be decided with reference to the chief or most- important purpose to which the building was devoted and in view of the particular facts of that case, it was found that the primary value of the building lay in certain shops. The rest of the house was neglected and of comparatively insignificant value, and therefore no right of pre-emption was deemed to exist in respect of the property in suit in view of Section 5(a) of the Punjab Pre-emption Act. This authority is not applicable to the facts o_f this case, and even if it were so, there is nothing, which was decided in this case, which can be considered to uphold the contention of the decree-holder-respondents.

9. The two decisions referred to above were u/s 5 of the Punjab Pre-emption Act which provides that no right of pre-emption shall exist in respect of sale, foreclosure of the right to redeem a shop etc. The principles governing the application of the law of pre-emption, are vastly dissimilar, from those, underlying relief of indebtedness legislation. It is often said, that the right of pre-

emption is of a piratical nature, and the Courts are reluctant to grant relief, except where the right is indubitably established by clear and cogent evidence. The Courts insist on strictness of proof in support of such a right.

10. In *Mahomed Beg Amin Beg and Another Vs. Narayan Meghaji Patil and Others*, the two learned Judges expressed their concurrence with the following observation by Phear J. In *Nusrut Reza v. Umbul Khyr Bibee* (1867) 8 Suth W. R. 309 (D);

"The right to pre-emption is very special in its character. It is founded on the supposed necessities of a Mahomedan family arising out of their minute sub-division and inter-division of ancestral property; and as the result of its exercise is generally adverse to public interest, it certainly will not be recognised by this Court beyond the limits to which those necessities have been judicially decided to extend".

The reasoning which weighs with the Court, when adjudicating upon rights under pre-emption law, will lead them astray, if it is imported for interpreting legislative measures granting relief against indebtedness, as they are not in *pari materia*. It is a cardinal rule of interpretation to which all others are subordinate, that a statute is to be expounded "according to the intent of them, that made it" (4 Inst. 330).

11. In *Sussex Peerage case*. (1844) 8 E. R. 1034, at P. 1057 (E) Lord Chief Justice Tindal, sitting in the House of Lords, observed;

"My Lords. The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in, such cases best declare the intention of the law giver. But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to preamble which "according to Chief Justice Dyer" (*Stowel v. Lord Zouch* (1797) 1 Plowden 353 at P. 369 (F)) is "a key to open the minds of the makers of the Act, and, the mischief which they intended to redress."

11-a. Similar view was expressed by Lord Blackburn when sitting in the House of Lords, in *Edinburgh Street Tramways Co. v. Torbain* (1877) 3 A. C. 58 at P. 68 (G). "I quite agree that in construing an Act of Parliament we are to see what is the intention which the Legislature has expressed by the words; but then the words again are to be understood by looking at the subject matter they are speaking of and the object of the Legislature, and the words used with reference to that may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances and another object would or might have produced".

12. While hearing appeal in the Judicial Committee of the Privy Council Lord Blackburn also expressed himself as under:

"The Tribunal that has to construe an Act of Legislature or indeed any other document, has to determine the intention as expressed by the words used. And in order to understand these words, it is material to enquire what is the subject matter with respect to which they are used and the object in view." Vide, *Direct United States Cable Co. v. Anglo American Telegraph. Co. Ltd.* (1877) 2 A. C. 394 at p. 412 (H).

13. There is ample authority for the proposition that the Courts should not merely construe the words of the legislative enactment but ought to gather the intent of the Legislature by taking into consideration the cause and necessity of making the Act. Vide *Hawkins v. Gather-cole* (1855) 6 DE G. M. and G. 1 at p. 21 (I). *Stradling v. Morgan* (1560) 1 Plowd. 201 at p. 204 (J), and *Eastman photographic Materials Co. Ltd. v. The Comptroller General of Patents, Designs and Trade Marks* 1898 A. C. 571 (K).

14. In interpreting the meaning and words of an expression it is useful to examine them in the light of the object and purpose of the statute. It will serve no useful purpose, therefore, to seek help from authorities under the preemption law. the object and intention of which is totally different from that of Section 60(1) of the Code of Civil Procedure. The spirit behind Section 60(1) (ccc) is to declare certain properties unattachable in execution of decrees. It is the policy of the law that in case of a debtor, regardless of his indebtedness or conduct or the corresponding hardship on the judgment-creditor, he should be allowed to keep with himself one main residential house and other buildings attached to it belonging to and occupied by him.

The tendency of the law of Creditors and debtors, in recent times, has been that a debtor should be helped, and to a limited extent even against his own indiscretions.

Among debtors, the agriculturist debtor as against any other debtor, receives a preferential treatment. u/s 60(c) house and other, buildings belonging to an agriculturist and occupied by him are exempt from attachment-Section 35 of Punjab Relief of Indebtedness Act VII of 1934, gave further protection to an agriculturist debtor by amending Clause (c) and by inserting Clause (cc) to Sub-section (1) of Section 60 of the Code of Civil Procedure. By. Clause (ccc), a debtor other than an agriculturist has also been granted a certain protection. His one main residential house and other buildings attached to it, provided it is occupied by him, regains sacrosanct where the arm of the creditor cannot reach unless the debtor has himself specifically charged that property with his debt, which is sought to be recovered. The words "one residential house and other buildings attached to it belonging to a judgment-debt or and occupied by him.....should be construed in harmony with the spirit and intent of the Act, the object of which is to relieve indebtedness in the sense that though the amount of

debt stands, it cannot be realised from sale of residential house.

15. Intention of the Legislature is at times a slippery footing, particularly when it has to be based on a speculative opinion as to what the Legislature probably meant. But where the sense and reason of the law, which is the soul of the law -- quia ratio legis est anima legis -- is clearly ascertainable, the Courts must choose a construction, consistent with the smooth working of the remedy provided by the Statute. The interpretation that I am persuaded to place on the expression, residential house, occurring in Section 60(1)(ccc), may result in causing irreparable injury to an honest decree-holder as against a dishonest or an overreaching judgment-debtor.

It is, however, not for this Court to impugn the wisdom of the Legislature or to sit in judgment over its policy or under the guise of interpretation, to legislate, with a view to cure defects, or otherwise, to modify the language of an Act in order to bring it in harmony with its own views of what is right or reasonable- A law cannot be construed from the point of view of individual hardship or pro privato commodo but always pro bono publico and in accordance with the object and purpose of its makers.

16. Following the above principles of construction, the reason and purpose of the Legislature may first be ascertained and then upheld.

17. Section 35 of the Punjab Relief of Indebtedness Act, 1934 which amended Section 60(1) of the Code of Civil Procedure-- appears to be to leave every debtor in possession of one residential house for his habitation though the Act was a measure which was designed in the main to relieve agricultural indebtedness in the Punjab on the lines of similar steps taken by Provincial Legislatures in other parts of India. The word "residential" and other cognate expressions such as, "reside", "residing", "resident", "residence" "residences" and "occupy" occurring in several statutes have variously shaded but elastic meaning. A person is ordinarily said to "reside" where he lives with his family. The word "residence" connotes two elements, (1) actual or physical habitation and (2) the intention to remain there permanently that is, for an unlimited time. In its ordinary sense the word "reside" carries with it the idea of permanence, that is for any length of time, as well as, continuity. The word "residence" denotes a dwelling house where a person lives in a settled abode.

18. In another sense, residential , house is a dwelling house as distinct from a house of business, warehouse, office, shop etc. Residential house is a building, used as a place of abode, in which, people reside or dwell in contradistinction to one which is used for commercial or business purposes. The conditions in our country are such which admit of a composite user of the same building. A part of the same house is used for dwelling, and the other part is meant for commercial or business purpose and sometimes even the latter portion, particularly after the business hours, is used for dwelling.

The house which is the subject-matter of this litigation has - three storeys. The

second and third storeys are exclusively used for residential purposes, and the first story is being used, partly for residential purposes, and partly for business purposes. Having regard to the mode of living of the people of this country, their habits and customs, it is not possible generally to designate a particular building as one, which is used exclusively for a residential purpose in contradistinction to a commercial purpose. The reasoning of the lower Court is fallacious and does not take into, consideration either the object underlying Section 35 of the Punjab Relief of Indebtedness Act, or the living conditions of the class of people to which parties belong.

According to this reasoning, a residential house ceases to have inviolate character, u/s 60(1)(ccc), the moment it is shown, that a part of it is being used for purposes of business or trade. This reasoning may lead to absurd results and defeat the very purpose which led the framers of the law to enact this provision. On this basis, residential building of a medical practitioner, will not be exempt from liability to attachment or sale, if in a portion, he receives or treats his patient.

Similarly, where in his house, an iron-smith works on his forge, a shoes-maker makes shoes on his last, a potter turns his wheel, or any other artisan spreads his tools, to make a living, or a petty trader keeps his wares for sale, according to the interpretation, which the learned counsel for the respondent, asks me to put on the words occurring in the Code, the provisions will be powerless in extending any effective protection. This construction will result in defeating the very purpose of the law. So far as the evidence on the record of this case is concerned. the primary use to which this building is put is residential.

19. The counsel for the judgment-debtor-appellants has not referred me to any decision in support of his contention. But there is a decision of Kapur J. in *Agha Jafar Ali Khan v. Radha Kishan* AIR 1951 P&H 433 (L), the facts of which were very similar to the facts here. There too the house under attachment was situated in Nivak Mandi, Amritsar a business locality. It was being used for the purposes of residence of the judgment-debtor, and his family. The upper storeys were used for residential purposes. It was contended in that case, has also been argued before me, that the first storey was being used as a shop and, therefore, the entire residential house should be deemed to have been converted into a shop. The argument was repelled by Kapur J. who observed;

"In this case there is evidence to show that the whole building is being used for the purposes of residence and even if there is a shop on the ground floor it cannot be said that that alone will convert it into something different from a residential house."

It may also be noticed that u/s 60(1)(ccc), exemption is given, not only to the main residential house, but also to other buildings attached to it. The portion of the house on the ground-floor which is being used as a shop, is attached to the main residential house. In the light of the above discussion, I cannot find any

merit, in the findings of the lower Court, or in the arguments advanced by the learned- counsel for the respondents.

20. It is not the function of the Courts of law to question the wisdom or policy underlying the legislative Act. The Courts have to interpret the law as enacted, and in case of ambiguity, an interpretation should be given, which is in harmony with the purpose and intent of the legislative measure. In this case, the object and intent was to grant relief to debtors, in respect of their only place of abode or actual habitation. The meaning of the words in Section 60(1)(ccc) of the CPC admit of no doubt I accordingly hold that the house in question, being the only residential house belonging to the judgment-debtors and occupied by them, is not liable to attachment or sale in the execution of the decree of the respondents.

21. In the result the appeals are allowed but in the circumstances of the case, I leave the parties to bear their own costs throughout,