
(1990) 12 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.A. No. 50 of 1981

Imrat Singh

APPELLANT

Vs

Prabhulal Raghuvanshi and Another

RESPONDENT

Date of Decision : 07-12-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 54, 64
Transfer of Property Act, 1882 — Section 40

Citation : (1993) 1 MPJR 459 : (1993) 38 MPLJ 400 : (1993) MPLJ 400

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : K.B. Chaturvedi, for the Appellant; Arun Mishra, for the Respondent

Final Decision : Allowed

Judgement

S.K. Dubey, J.

This miscellaneous second appeal u/s 100 read with Order 21, Rule 58, Civil Procedure Code, against an order dated 15-4-1981, passed in Misc. Civil Appeal No. 10/1990 by District Judge. Guna, confirming an order of Civil Judge, Class I, Guna, passed on 11-8-1980, rejecting the objections of the appellant under Order 21. Rule 58. Civil Procedure Code.

Admitted facts in the case are that respondent No. 1 obtained a decree against respondent No. 2 in Civil Suit No. 22-A/1974; the said decree was put in execution; before the property in dispute could be attached, on 31-8-1974 respondent No. 2/Judgment-debtor entered into an agreement to sell and a sale-deed was executed and registered on 15-6-1978 by respondent No. 2 in favour of the appellant. In execution of the decree the property so conveyed by alienation was attached on 24-1-1976. The appellant preferred objections under Order 21, Rule 58, Civil Procedure Code, on 23-3-1979 in M.J.C. No. 3/1979. After adjudicating the objections the executing Court dismissed the same, holding that though the agreement to sell was entered into before attachment,

the sale deed was executed after attachment, therefore, the right, title and interest in the property attached, though in possession of the appellant, did not pass to him. In appeal too, the order of the executing Court was confirmed.

Shri K. B. Chaturvedi, learned counsel for the appellant, placing reliance on a decisions of the Apex Court in case of V. K. Sreedharan v. C. Balakrishnan 1990 (1) MPWN 205, and an unreported Division Bench decision of this Court in F. A. No. 57/1971, Gangaprasad v. State of M. P. and Ors. decided on 24-2-1975 at the Main Seat, contended that the approach of the two Courts below was wholly illegal and against settled position of law; if under a contract of sale entered into before attachment, the conveyance after attachment in pursuance of the contract passes on good title in spite of the attachment. The agreement for sale indeed creates an obligation attached to the ownership of property and since the attaching creditor is entitled to attach only the right, title and interest of the Judgment-debtor, the attachment cannot be free from the obligations incurred under the contract for sale. The findings of the two Courts below cannot be accepted that because of the agreement to sell entered into prior to the attachment, the agreement did not create any present interest in the house and could not prevail against the attachment and that the subsequent transfer made in favour of the appellant in pursuance of the agreement was ineffective and conferred no title, being in violation of the attachment, in view of the aforesaid decisions of the apex Court and this Court. The Supreme Court rejected the contention advanced holding that the rights of the attaching creditor shall not be allowed to override the contractual obligation arising from an antecedent agreement for sale of the attached property. The attaching creditor cannot ignore that obligation and proceed to bring the property to sale as if it remained the absolute property of the Judgment-debtor. The Division Bench of this Court observed in para 4 of the Judgment in case of Gangaprasad (supra) that attachment, in correct legal sense, is not of any specific property but of the right and interest of the defaulter or Judgment-debtor, as the case may be, in the property. When a person executes an agreement for sale of his property, it is true that the agreement has not the effect of conveying the property to the purchaser, but the agreement creates an obligation annexed to the ownership of the property and can be enforced against a transferee with notice thereof (Section 40 of the Transfer of Property Act, 1882). All that can be attached, in such a situation, is the right of the defaulter or the Judgment-debtor in the property, subject to his obligation under the agreement to convey the property to the purchaser. Even after the attachment, the defaulter can be compelled in a suit for specific performance to complete the sale and if the property is sold, this obligation can be specifically enforced against the auction purchaser, provided he has notice of the prior agreement. The attachment does not prevent the defaulter in completing the sale in pursuance of the prior agreement. For taking this view the Division Bench placed reliance on a decision of Nagpur High Court in case of Ghusaram v. Parashram, AIR 1930 Nag. 163.

In view of this legal position, Shri Mishra, learned counsel for respondent No. 1,

alternatively contended that the decree-holder's charge shall remain over the consideration received by the Judgment-debtor in the property conveyed by registered deed in pursuance of the agreement to sell. In this respect no observation or order can be made, as it is up to the decree-holder to execute the decree from the assets available with the Judgment-debtor.

In the result, the appeal is allowed. The orders of the two Courts below dismissing the objections of the appellant under Order 21, Rule 58. Civil Procedure Code, are set aside and it is held that the executing Court was not competent to attach and put for sale the said property in. execution of the decree. Though the successful party is entitled to costs throughout, in the facts and circumstance of the case, I do not award any costs.