
(1937) 10 AHC CK 0020
In the Allahabad High Court

Mt. Araz Bibi

APPELLANT

Vs

Mubarak Ali Khan and Another

RESPONDENT

Date of Decision : 19-10-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60

Citation : AIR 1938 All 85 : 173 Ind. Cas. 337

Hon'ble Judges : Niamatullah, Acting C.J.

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Niamatullah, Ag. C.J.

1. This is an execution second appeal by a judgment-debtor. The decree, holders attached her house in execution of their decree. She objected on the ground that she was an agriculturist and the house, which was alleged to be her residential house, was exempt from attachment and sale in execution of decree. The objection was dismissed by the first Court. An appeal by the judgment-debtor to the Subordinate Judge of Bulandshahr was dismissed summarily. In second appeal this Court set aside the order of the Subordinate Judge and remanded the case for a fresh decision with the direction that the Court should consider the question of admitting fresh evidence in appeal. The lower Appellate Court again dismissed the appeal of the judgment-debtor and refused to admit fresh evidence which she desired to produce. In the present second appeal the view of law on which the lower Appellate Court's order is based, is challenged. That view of law is that a judgment-debtor, who was not an agriculturist on the date of attachment but became so by change of circumstances subsequently and was an agriculturist at the date of sale, cannot be considered to be an agriculturist for the purposes of Section 60, Civil P.C.

2. The judgment-debtor's case is that she was a small zamindar, having an income of Rs. 192 in the shape of rents paid by tenants. She had also

"khudkasht" in one-third of 39 bighas, which was cultivated by her along with another person. It is said that six out of 39 bighas is un-culturable land, and that her share in the remaining khudkasht is only 11 bighas. This was the state of things at the date of attachment of the house by the respondents. The Court of first instance disallowed her objection, holding that the main source of her income was not agriculture but zamindari. Before her appeal from the order of the first Court was heard, her zamindari was sold in execution of the decree of one Man Mohan, but before the sale was confirmed, she sold her zamindari to her step-daughter and paid off Man Mohan's decree with the sale proceeds, so that by the time her house could be sold in execution of the respondents' decree, she lost all her zamindari property and the only source of income left to her was cultivation of 11 bighas khudkasht land. Assuming these facts are correct, the question is whether the appellant should be considered to be an agriculturist on the date of sale, and if so, whether her residential house was exempt from sale. The lower Appellate Court is of the opinion that, since the appellant was not an agriculturist on the date of attachment when she had substantial zamindari property and agriculture was not the main source of her livelihood, subsequent change in her circumstances cannot be taken into account in determining her position. In my opinion this view is not correct. Section 60, Civil P.C. declares what properties can be attached and sold in execution of a decree. The proviso makes an exception as regards a number of properties and it declares certain properties not to be liable to "attachment or sale". One of such properties is the house or other building belonging to and occupied by an agriculturist. To my mind the section exempts the house of an agriculturist from both, namely attachment and sale. It will rarely happen that between the date of attachment and sale the status of the judgment-debtor undergoes such a change as to make him an agriculturist on the date of sale, which he was not on the date of attachment. In this particular case however, if the facts alleged by the appellant are true, such a thing has happened. On the date of attachment, the judgment-debtor had two sources of livelihood, (1) rent payable to her by the tenants, and (2) profits arising from the cultivation of her khudkasht land. Since the main source of her livelihood on the date of attachment was the former, she could not then be considered to be an agriculturist, and there was justification for her residential house being attached. If the main source of her livelihood, viz., zamindari, passed out of her hands before the sale of her residential house, so as to make agriculture the only source of her livelihood, her residential house cannot, in my opinion, be sold.

3. The decision of the lower Court proceeds on what I consider to be an incorrect view of law, and it was because of that view that the lower Appellate Court did not consider it necessary to receive further evidence in appeal. In these circumstances I accept the appeal, set aside the order of the lower Court and remand the case to that Court with the direction that an opportunity be given to the appellant to substantiate her allegation that she became an agriculturist by the date fixed for sale of the house. The opposite party shall be at liberty to

produce rebutting evidence. The lower Appellate Court should decide on the evidence thus produced whether the judgment-debtor was an agriculturist and, if so, whether the other conditions required by Section 60, Civil P.C. exist. Accordingly I set aside the order appealed from and remand the case to the lower Appellate Court for disposal according to law. Costs shall abide the result.