

(1942) 09 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : Civil Second appeal No. 25 of 1988

Pandit Gana Lal and others

APPELLANT

Vs

Shamboo Nath Ganjoo

RESPONDENT

Date of Decision : 02-09-1942

Acts Referred:

Jammu and Kashmir Land Revenue Act, 1996 — Section 3(4)

Citation : (1942) 09 J&K CK 0001

Hon'ble Judges : B.J.Dalal, C.J and Abdul Qayoom, J

Bench : Division Bench

Advocate : Abdul Ahad, Amar Nath Kak, Advocates appearing for the Parties

Judgement

This is an appeal from an order of our brother Sawhny passed in civil 1st appeal No. 99 of 1987. In execution the decreeholders appellants

desired to sell the HaqiAssami, that is the Assami rights of the judgmentdebtor Shambu Nath. The executing court refused to sell the property

under the provisions of Section 59 of the Tenancy Regulation. The learned Judge of the court was of opinion that the HaqiAssami in Kashmir

cannot be attached and sold in execution of a decree because the Assami, has no saleable interests in the property. In this court on behalf of the

appellants reference was made to a judgment of this Bench in Civil revision No. 118 of 198485 decided on 19th Magh 1988. We held that under

Section 60 of the Code of Civil Procedure Araziat Makbuza Assamian which were saved from sale meant land and the actual cultivation of the

judgmentdebtor and not such land as the Assami got cultivated through his subtenants. The judgment, however, was based on the language of

Section 60 (1) (c) (2) of the Code of Civil Procedure. Sale of property may however, be prohibited by other laws of the State and we are of

opinion that the executing court was correct in relying on the provisos of Section 59 of the Tenancy Regulation. The provisions of that section declare that attachment and sale in execution of a decree or order of any court shall be precluded in the case of a right of occupancy in the Province of Kashmir. It was argued here that the right of occupancy meant the right of occupancy tenant. There is no justification for such an interpretation. An Assami as defined in Section 3(4) of the Land Revenue Regulation means a person who enjoys right of occupancy in land directly under the State. What is safeguarded under Section 59 of the Tenancy Regulation is not the right of an occupancy tenant but the right of occupancy and that right may be enjoyed by an occupancy tenant under a proprietor or by an Assami under the State. Our opinion is that the provisions of Section 59 of the Tenancy Regulation apply to an Assami also. For this reason we dismiss this appeal costs.