

(1970) 02 AHC CK 0037
In the Allahabad High Court
Case No : Ex. Second Appeal No. 63 of 1968

Prem Narain Kapoor and Others	Vs	APPELLANT
Sudhrisht Narain Anad and Others		RESPONDENT

Date of Decision : 11-02-1970

Acts Referred:

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

Citation : (1970) 40 AWR 298

Hon'ble Judges : S.D. Khare, J;H.N. Seth, J

Bench : Division Bench

Advocate : Raja Ram Agarwals, for the Appellant; Radha Krishna for Respondents, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—This second appeal by the objector has come up before this Bench on a reference made by a learned single Judge of this Court. Main question that arises for consideration in this case is whether a right to get a property reconvened is a property which can be attached and sold in execution of a decree.

2. Sri Mool Narain father of the Appellants sold two houses Nos. 53 and 54, Chowk Ganga Das by means of a registered sale deed dated 10-10-1958 to Sri Sudrisht Narain. On the same day he executed a rent note agreeing to occupy the two houses as tenant. Thereafter a separate agreement was also entered into under which Sri Mool Narain was given a right to repurchase the two houses within a period of ten years on payment of the sale consideration and the rent if any outstanding on the date of repurchase. Subsequently Sri Sudhrisht Narain obtained a money decree against Sri Mool Narain on 15-7-1965. Mool Narain died on 18-1-1966 and the decree holder put his decree into execution against the Appellants who were the sons of Mool Narain on 24-4-1966, by attachment and sale of the right of repurchase of Mool Narain, acquired under the agreement dated 10-10-1965. The Appellants were impleaded as the right to repurchase under the agreement dated 10-10-1965 had devolved upon them after the death

of Mool Narain. Before the decree could be put in execution Sri Deep Narain son of Mool Narain served a notice upon Sri Sudhrisht Narain for enforcing his right of repurchase under the agreement and filed a suit for specific performance of the contract.

3. Appellants filed objections to execution of the decree u/s 47 of the CPC contending that the right of Sri Mool Narain to get the property reconveyed was not attachable and saleable in execution of the decree and that after the suit for specific performance had been filed the property in dispute became custodia legis and as such also it could not be sold in execution of the decree. Both these objections were repelled by the executing court. Appellants went up in appeal which was also dismissed. They have now filed the present second appeal and have canvassed both the points again before us.

4. Sri Raja Ram Agarwal, learned Counsel appearing for the Appellants contended that u/s 60 of the CPC it was only a tangible, movable or immovable property that could be made the subject matter of attachment and sale. He argued that by entering into an agreement, to get the property sold by him reconveyed, Sri Mool Narain did not acquire any interest in the two houses (Section 54 of the Transfer of Property Act) and as such this right could not be described as immovable property within the meaning of Section 60 of the Code of Civil Procedure. According to him the scheme underlying Order 21 of the Code shows that there is no provision under which such a right could be attached in execution of the decree. Order 21 Rule 43 makes provision for the attachment of movable property other than agricultural produce in possession of the judgment debtor by providing that the property is to be attached by actual seizure. Order 21 Rule 46 provides for attachment of movable property not in possession of the judgment debtor by requiring the person in possession not to give it over to the judgment debtor. In the instant case if it is considered that Sri Mool Narain was possessed of the right to get the property reconveyed this right was not capable of actual seizure and therefore it could not be attached in the manner provided Under Order 21 Rule 42 of the Code. This right could also not be attached in the manner provided for in Order 21 Rule 46 as there is no other person who could be said to be in possession of the property and who can be required not to let the judgment debtor have it. He therefore argued that when the Legislature provided that movable property could be attached and sold it only meant tangible Or corporeal movable property and not intangible or incorporeal property. After giving careful consideration to this matter, we have come to the conclusion that the argument advanced on behalf of the Appellant is not tenable. Section 60 of the CPC runs thus:

60(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and save as hereinafter mentioned, all other saleable property, movable or immovable,

belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same he held in the name of the judgment debtor or by another person in trust for him or on his behalf.

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(a).....(b).....(C).....(d).....

(e) A mere right to sue for damages.

(f) Any right of personal service, (g).....(h).....(i).....(ia).....(j).....

(k).....(l).....

(m) An expectancy of succession by survivorship or other merely contingent or possible right or interest.

(n) A right to future maintenance;

(o) any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree;

(p)... ..

Explanation 1... ..

Explanation 2... ..

Explanation 3... ..

(2)

A perusal of this section shows that apart from the specific items mentioned in this section and save as otherwise provided, all saleable properties whether movable or immovable belonging to or over which or over the profits of which a judgment debtor has a disposing power can be attached and sold in execution of the decree. The Legislature clearly intended that all saleable properties belonging to or over which the judgment debtor has a disposing power should become liable to attachment and sale. The words "movable or immovable" used after the words "saleable property", were used to clarify that all property of whatever nature it may be, if it is saleable, can be attached and sold in execution of a decree. These words were not used to limit the type of property which could be sold, to corporeal properties alone. According to Section 3(36) of the General Clauses Act, which applies to the interpretation of the Code of Civil Procedure, the words "movable properties" would mean property of every description except immovable property. It means that if there is a property of any description and it cannot be said to be immovable property it will be covered by the words movable property. Use of the words property of any description in this section clearly negatives the suggestion made on behalf of the counsel for the Appellant that in

Section 60 the words "movable property" have been used as being confined to corporeal property.

5. Definition of the word moveable property as given in General Clauses Act would not apply to the use of those words in Section 60 of the CPC only if there was something in the section itself or its context to show that the Legislature did not want to use the words in that sense. We find that there is nothing in this section to indicate that the Legislature intended to use the words "movable or immovable property" as meaning corporeal movable or immovable properties.

6. According to Section 60 every sale-able, movable or immovable property is liable to attachment and sale except the properties mentioned therein. Amongst the exceptions we find that certain properties have been described in Clauses (e), (f), (m), (n) and (o). These particulars are particulars of properties which are incorporeal properties. It is therefore clear that but for the exception these properties would also have been liable to be attached and sold in execution of the decree. This also indicates that the Legislature did not intend to confine the properties which were liable to be sold in execution of the decree to corporeal properties only.

7. Learned Counsel for the Appellant argued that an agreement to repurchase does not create an interest in the immovable property, itself. Even though such a right may be property in its widest sense in which this word can be used, it cannot be described as an immovable property. If it is considered to be a movable property it is not capable of attachment and sale as provided in Order 21, Rule 43 or Rule 46 of the Code of Civil Procedure. He made this submission to advance two fold arguments (1) that intention of the Legislature was to deal with corporeal property alone and (2) there being no procedure for attachment provided, such a right could not be attached or sold.

8. We do not find any force in either of these two arguments. As discussed above, there is inherent indication in Section 60 of the CPC itself to show that the Legislature wanted that property of every description if it is saleable should be liable to attachment and sale and there is nothing in the Code to limit the application of the definition of the property as given in the General Clauses Act. The provision made in the first schedule to the Code of Civil Procedure, wherein Order 21 also lies, are nothing but rules framed under Act V of 1908. These provisions can not be utilised for curtailing the powers given to a Court under main provisions of the Act. Even if there is no provision in the Rule for making attachment of such rights it will always be open to a civil court to follow a suitable procedure for effecting attachment and sale of such property. We can well imagine that considering the nature of variety of sale-able properties it was very difficult for any rule making body to lay down the procedure for effecting attachment of all sorts of properties that are liable to attachment and sale. It therefore left it to the discretion of the Court, that in cases for which provision had not been made in the Rules to devise its own procedure for effecting attachment of property. We are therefore of opinion that merely because there is

no provision in the Rules Under Order 21 of the Code about the manner in which such property can be attached, it does not mean that the Legislature did not intend such property to be attached or that the properties which can be attached and sold u/s 60 of the CPC should be limited to corporeal properties alone.

9. We are supported in this view of ours by a Division Bench decision of the Calcutta High Court in *Champarun Sugar Co. Ltd. and Another Vs. Haridas Mundhra and Others*, . In this case after considering a number of authorities, learned Judges of the Calcutta High Court came to the conclusion that a right to purchase shares for an agreed consideration or even an option to do so is a right to property under a completed contract. Such a right is a beneficial interest in movable property which is itself movable property assignable and transferable; such a right can be subject matter of attachment. Where the property is attachable and the decree holder asks for execution, the court cannot refuse it and say that it has no means of carrying out the execution. In the absence of any specific provision as to the mode of attachment or any appropriate particular form the Court has ample power u/s 51(c) to evolve a prohibitory order suitable to the nature of the case.

10. Learned Counsel appearing for the Appellant tried to distinguish this case on the ground that in this case the right in question was the right to purchase shares which were movable properties. It was not a case to which Section 54 of the Transfer of Property Act was applicable. He contended that since it has been specifically provided in Section 54 of the Transfer of Property Act that an agreement to purchase an immovable property does not create an interest in the immovable property the reasoning of the Calcutta High Court would not apply to the facts of the present case. In our opinion, in the view which we have taken, this distinction does not help learned Counsel for the Appellant. It was not disputed that right to repurchase is property within the widest meaning of the words in which it could be used and that it would be saleable unless prohibited by something contained in the Transfer of Property Act or Section 60 of the Code of Civil Procedure. All that was contended was that Section 60 of CPC did not apply to incorporeal or untengible property and as such a right could not be made the subject matter of attachment and sale. We have already repelled that contention. Whether an interest in the immovable property is created or not is immaterial. Right to get a property reconveyed is a right which is quite different from a right which may be claimed in the physical property itself sought to be reconveyed.

11. In the case of *Raja Bahadur Narasingerji Gyanagerji v. Raja Panuganti Parthasaradhi Rayanim Garu* AIR 1921 Mad 498 it was held that a right to get reconveyance and possession of property worth Rs. 15 Lakhs for repayment of 6 Lakhs is property of a very valuable kind, which is attachable and saleable under provision of the CPC . Learned Counsel for the Appellant argued that in this case also the question that because of Section 54 of the Transfer of Property Act, no interest in the immovable property itself was created and that u/s 60 of the CPC

only corporeal property could be sold was not considered. As explained above so long as the right to get re conveyance is a right which can be described as property, it is immaterial whether it is incorporeal property and that no interest in the physical property sought to be reconveyed is created.

12. Learned Counsel for the Appellant then drew our attention to the fact that under the contract of reconveyance it was provided that if Sri Mool Narain paid a sum of Rs. 2000/- and all the rent due upto the date the property would be reconveyed to him and that the agreement would be binding on the Uttaradhisikaris of both; Sudhisht Narain and Mool Narain, He contended that the right created in favour of Mool Narain was a personal right and was not liable to attachment and sale. He relied on the case of Gobardhan Vs. Raghubir Singh in which it was held that where a person had a personal interest Which cannot be assigned, his assignee can in no sense be regarded as his representative. In that case a question arose about assign ability of a right to get reconveyance which was conferred upon one Gayadin and his lineal descendants. The case was decided on the footing that in the circumstances, a right conferred on Gaya Din and his lineal descendant was a personal right and not assignable. In the case before us it was argued that the word Uttaradhisikari in the agreement connotes that it was only the descendant of Mool Narain who could claim a right to get the property reconveyed from Sudhisht Narain or his descendant.

13. In our opinion in the context the word "Uttaradhisikari" is not used in the sense of descendants of Sudhisht Narain and Mool Narain only. It was used in the general sense of all successors in interest of Sudhisht Narain and Mool Narain, irrespective of the fact that the interest acquired by them was by succession, assignment or transfer. A provision in the agreement that it would be binding on the successors of Sudhisht Narain and Mool Narain itself shows that there was nothing personal regarding benefits and obligations under the agreement. The agreement certainly was not confined to lineal descendants of the parties. We are of opinion that facts of the case reported in Gobardhan Vs. Raghubir Singh are distinguishable from the facts of the present case and the Appellant cannot take advantage of it.

14. Prima facie an agreement to get a property reconveyed is assignable unless there is something in the agreement to show that it was not intended to be assigned. It was so held by Bombay High Court in the case of Vishweshwar Narsabhatta Gaddada Vs. Durgappa Irappa Bhatkar, . While so holding learned Judges of the Bombay High Court relied on a decision of the Privy council case in the case of AIR 1928 174 (Privy Council) . Similar view was taken by the Madras High Court in the case of Sinnakaruppa Gounder Vs. M. Karuppuswami Gounder and Another, . In the case of Bipin Behari Deb v. Masrab Ali AIR 1961 Ass 173 Mehrotra J. took the view that a transferee of a contract for reconveyance can enforce the contract in the absence of any contract to the contrary. The mere fact that in the contract itself only the name of vendor or his heirs is mentioned as the persons who alone are entitled to get reconveyance it does not mean that

there is prohibition of assignment of the right which was possessed by the vendor or his heirs under the said contract. The effect of the mention of the name of the vendor and his heirs only is that parties to the contract were the vendor and his heirs. No third party could be regarded as a party to that contract. But it does not necessarily mean that the contract as such is not transferable unless there is a prohibition express or implied in the contract itself to the effect that such a right can not be assigned. Section 23(b) gives the power to the transferee to enforce the contract.

15. No case has been brought to our notice in which it has been held that a right to get a property conveyed is not transferable or assignable. It therefore follows that unless there is a prohibition in the contract itself, right to get a property reconveyed will be transferable and as such saleable. In this case, in the agreement for reconveyance there are no words which either expressly or by implication can go to show that the parties intend that the right to repurchase given to Sri Mool Narain should not be transferable. The term in the agreement that it would bind the successors of Mool Narain and. Sudhrisht Narain do not indicate that the parties intend that the contract could be enforced only by the heirs and that it was not meant to be transferable. We therefore reject the Appellant's argument that the contract in question was of a personal nature and as such not assignable or saleable within the meaning of Section 60 of the Code of Civil procedure.

16. According to Section 6 of the Transfer of Property Act, property of any kind may be transferred except as otherwise provided by the Act or by any other law for the time being in force. There are about 10 properties mentioned in this very section under which a property cannot be transferred. Similarly Section 60 of the CPC mentions certain properties specifying the circumstances when they cannot be made the subject matter of attachment and sale. Normally a property which comes under the ambit of prohibition contained in Section 6 of the Transfer of Property Act will not be saleable and as such will not be liable to attachment and sale u/s 60 of the Code of Civil Procedure. Property which does not come within the ambit of prohibition contained in Section 6 of the Transfer of Property Act may be saleable and still it may not be attachable and saleable in execution of a decree if it is one of such properties mentioned in Section 60 of the Code of Civil Procedure.

17. Learned Counsel for the Appellant tried to argue that the right created in favour of Mool Narain was not saleable as it was an interest in property restricted in its enjoyment to the owner personally and as such it was not transferable within the meaning of Section 6(d) of the Transfer of Property Act. There is no other clause in this section under which transfer of such a right may be objected to. u/s 6(d) of the Transfer of Property Act what has been made non-transferable is an interest in property and that too when it is restricted in its enjoyment to the owner personally. In view of the provisions of Section 54 of the Transfer of Property Act an agreement to get the houses reconveyed does not create an

interest in the houses. We have already discussed that under the agreement right to get the house reconveyed was not restricted to Mool Narain personally. Moreover Mool Narain was not the owner of the two houses. Under the circumstances it cannot be said that the transfer of the property in question viz. right to get the houses reconveyed, was prohibited u/s 6(d) of the Transfer of Property Act.

18. It was strongly contended that the property in question was not attachable and saleable because of proviso (m) to Section 60 of the Code of Civil Procedure, according to which an expectancy of succession by survivorship or other similar contingent, possible rights or interest are not liable to attachment and sale in execution of a decree. It was argued that a right created by an agreement to get property reconveyed is merely a possible right or a contingent right to the property sought to be repurchased and as such it was not liable to attachment and sale. He relied upon a decision of a learned single Judge of this Court in *Chhedalal v. Smt. Gulab Devi Ex. S.A. No. 1940 of 1957* decided on 12-3-1959 in support of this contention. No doubt in this case it has been held that the right of reconveyance cannot be attached and sold in execution of a decree it is only a contingent or possible interest and is prohibited under proviso (m) to Section 60 of the Code of Civil Procedure.

19. In our opinion this argument advanced on behalf of the Appellant is not correct and with great respect we regret our inability to concur in the view expressed by the learned Judge in *Chhedalal's* case.

20. It is true that on execution of an agreement for reconveyance of house property no right or interest in the property itself is created in favour of the person who has been given a right to get the property reconveyed and therefore, if the interest of Sri Mool Narain in the house itself was being proceeded with by way of attachment and sale it could be argued that interest in the two houses could not be attached. Either because Sri Mool Narain had no interest in that property or that even if he had any such it was only a possible or contingent interest. A right to get a house property reconveyed is itself a valuable right quite distinct and separate from the property or interest in the property sought to be reconveyed and that right is alienable. This right comes into existence immediately the contract is made and it cannot be said that it is only possible or contingent right. Attachments such a right therefore is not prohibited by proviso (m) to Section 60 of the Code of Civil Procedure. In the case cited before us this distinction between the properties was overlooked. The learned Judge who decided *Chhedalal's* case relied on the case of *Ahmaduddin Khan v. Majlis Rai* ILR 3 All 12. In that case it was held that right or interest which the vendor of immovable property has in the purchase money where it has been agreed that the same shall be paid on the execution of the conveyance, is not so long as the conveyance has not been executed, a debt but a merely possible right or interest and as such u/s 266 of Act X of 1877, is not liable to attachment and sale in execution of a decree. The person who purchases such a right or interest at a

sale in the execution of a decree takes nothing by his purchase. In this case so long as conveyance Was not executed, the right or interest of the vendor to claim any money could not come into existence and as such no question of attaching any such right in execution of a decree could arise.

21. Next case relied upon by the learned single Judge in Chheda Lal's case was the case of Gorakh Singh v. Sidhgopal ILR 28 All 383 in which it was held that the interest in the preempted property of a successful preemptor who has not yet paid the preemptive price fixed by his decree is an interest, the attachment of which is prohibited by Section 266(k) CPC on the ground that on the date on which the order of attachment was passed the successful preemptor had nothing but contingent interest in the property which under the provisions of Section 266(k) of the CPC was not liable to attachment and sale as the Respondent did not acquire any right unless he had paid the sum of Rs. 3000 for the reconveyance of the property and till then his right was only a contingent one. In this case what was sought to be attached was the interest in the property, sale of which had been preempted and it was held that so long as the purchase money was not paid the preemptor did not acquire any interest in the property itself and therefore his interest in such a property was merely a contingent or possible interest which could not be attached. In a case, such as before us where right to get the property reconveyed is got attached no attempt is made to get any interest in the property itself which is sought to be reconveyed under the agreement attached. As stated earlier a right to get the property reconveyed is in itself a property liable to attachment and sale quite distinct and different from any interest in the property sought to be reconveyed. As a matter of fact according to Section 54 of the Transfer of Property Act by agreeing to re-convey the property the person who has been given the right to get it reconveyed does not acquire any interest in that property and therefore no question of the same being in presented or contingent arises. Similarly the case of AIR 1939 6 (Privy Council) relied upon in Chhedalal's case was a case where a contingent interest was sought to be attached and it was held that such an interest was not liable to attachment and sale.

22. We accordingly over-rule the Appellants objection that the right in question was not liable to attachment and sale as the same was barred by proviso (m) to Section 60 of the Code of Civil Procedure.

23. Learned Counsel for the Appellant then argued that inasmuch as the agreement to reconvey provided that if Sri Mool Narain wanted to get the two houses reconveyed, he had to pay the rent due upto date along with the purchase money stipulated therein. He urged that under the circumstances the contract to get the property reconveyed was coupled with a burden to pay the rent and as such it was not transferable and consequently it was not liable to attachment and sale in execution of a decree.

24. In support of this contention he relied on following observations made by the Supreme Court in the case of Khardah Company Ltd. Vs. Raymon and Co. (India)

Private Ltd., :

...The law on the subject is well settled and might be stated in simple terms. An assignment of a contract might result by transfer either of the rights or of the obligations there under. But there is a well recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties.

According to observations made by the Supreme Court if under a contract there are obligations upon a party that party cannot assign it without the consent of the other party. Question that arises for consideration is whether under the agreement dated 10-10-1958 by which Sri Sudhrisht Narain agreed to reconvey the property to Sri Mool Narain any obligation was placed on Sri Mool Narain and whether if he transferred the contract to any one it had the effect of transferring the obligation under the contract without the consent of Sri Sudhrisht Narain. It may be mentioned that in this case three different contracts were entered into between the parties on 10-10-1958. The first contract was the one by which Sri Mool Narain sold the two houses to Sri Sudhrisht Narain. The second contract was the transaction by which Sri Mool Narain became tenant of Sri Sudhrisht Narain and the third contract was the agreement by which Sri Sudhrisht Narain agreed to reconvey the properties to Sri Mool Narain. Obligation to pay rent by Sri Mool Narain was there under the rent note and not under the agreement for reconveyance. Assignment of agreement of reconveyance could not therefore result in transferring the liability for payment of rent which would continue under the second contract. What was mentioned in the third contract was that in case any rent was outstanding that too had to be paid in addition to the sum of Rs. 2,000/- as consideration for reconveyance of the property. Payment of consideration of reconveyance so desired, cannot be said to be an obligation under the third contract and as such an assignment of the agreement to get the property reconveyed according to which the consideration is to be paid by the assignee does not amount to transfer of any obligation without the consent of another party. Assignability of the contract in this case would therefore not depend on the consent of Sri Sudhrisht Narain. We are therefore of opinion that observations made by the Supreme Court in the aforesaid case also do not help the Appellant.

25. Last point argued by the Appellant was that as soon as the suit for specific performance of the contract of getting the property reconveyed was filed, the right to get the property re-conveyed became custodia legis and as such it ceased to be liable to attachment and sale in execution of a decree. We fail to see how, if a suit is filed in respect of certain property the property itself gets into custody of the court and on what principle a property which is liable to

attachment and sale would cease to be so liable merely because a suit in respect of that property has been filed. In support of his contention that a property in custody of a court is not liable to attachment and sale learned Counsel for the Appellant relied on the case of *St Joseph's tile Works Ltd. v. Kottayam Bank Ltd.* AIR 1953 T C 21. In that case it was held that when an amount is deposited in court by a party to a suit and reliefs are claimed in the suit on the basis of the deposit, the amount deposited must be deemed to be in custody of the court to be disposed of by it according to the decision in the suit. Until therefore the court decides one way or the other as to who is entitled to the money the money cannot be said to belong either to the Plaintiff or to the Defendant. However it cannot be said that in such cases the person who makes the deposit will have no manner of right to the amount deposited. It cannot also be said that he has no disposing power whatever over the money deposited and that it is therefore, not property attachable u/s 60 Code of Civil Procedure. But his disposing power is a limited one. He can transfer the right to the money only subject to the result of the suit. Hence, it is only this limited right of the depositor that can be attached by his creditor. Thus the creditor can attach whatever rights the depositor may have in the money according to the decision in and subject to the result of the suit.

26. We fail to see how this decision helps the learned Counsel for the Appellant in substantiating his submissions. In this case it was held that even though the property may be in the custody of the court still it continues to be liable to attachment and sale u/s 60 of the Code of Civil Procedure. Since there was a dispute as to who actually was entitled to get that money it could not be said that the money either belonged to the Plaintiff or the Defendant. In such circumstances any attachment made would be subject to ultimate decision of the Court.

27. Reliance was also placed on the case of *Roop Chand v. Gulzari Lal* AIR 1954 P&h 25 where it was held that in the absence of a specific provision to the contrary the property which is in custodia legis cannot be attached in execution of a decree unless the specific purpose for which the property is held is fulfilled. In that case a sum of Rs. 1522 had been deposited and placed in the custody of the court on account of arrears of rent and costs of the suit. The landlord wanted to attach this amount in execution of another decree. It was held that since the money was in the custody of court for a specific purpose it could not be subjected to attachment as the person depositing the money had no disposing power over the money. This case is no authority for the proposition that as soon as a suit is filed in respect of certain property that property comes into custody of the court and as such the person claiming that right loses right to dispose that property.

28. Reliance was also placed on certain observations made by some of the learned Judges in the case of *(Mahant) Shantha Nand Gir Chela and Mahant Gayanand Gir Vs. (Mahant) Basudevanand* . In that case it was observed that--

When either immovable or moveable property is offered as security, the proprietary interest of the surety is not automatically extinguished. Merely a first charge is created on the security which will have to be available in the first instance for the purpose for which it has been offered. Although the depositor cannot defeat that purpose, his power of disposal over the security, subject to that charge will subsist. His interest in the surplus which may remain over is both transferable and attachable. Such an interest does not come within any of the exceptions enumerated in Section 6, TP Act. Nor is such security exempted from attachment u/s 60 Code of Civil Procedure.

In our opinion aforesaid observations do not at all help the argument raised by the learned Counsel for the Appellant. If at all they go to support the contention that even though a property has been offered as security, it can still be attached in execution of a decree though the same may be subject to the charge which has already been created because of that property being furnished as security.

29. We are therefore of opinion that there is no force in any of the contentions raised on behalf of the Appellant. The appeal therefore fails and is dismissed with costs.