

(2003) 07 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Revision Petition No. 271 of 1995

Ratan Lal and Another

APPELLANT

Vs

S.B.B.J. and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 74, Order 21 Rule 75, 60
Rajasthan Agriculture Credit Operations (Removal of Difficulties) Act, 1974 — Section 12
Rajasthan Tenancy Act, 1955 — Section 37

Citation : (2004) 1 RLW 306 : (2003) 4 WLC 242

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : Manish Shishodia, for the Appellant; O.P. Punglia, for the Respondent

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the parties.

2. Perused the impugned order dated 4th March, 1995 against which the petitioner preferred this revision petition.

3. The brief facts of the case are that the plaintiff- respondent No. 1 Bank obtained a decree for Rs. 72,079/- on 16th Dec., 1978. The execution petition was filed for recovery of the said amount by sale of the mortgaged property by the decree holder non-petitioner No. 1. In the execution petition, the judgment-debtor submitted an application raising objection that since, the property mortgaged is an agriculture land, therefore, it cannot be put to auction and there is bar against the attachment and sale of the agriculture land.

4. The Executing Court observed that there is no provision in the CPC, which puts bar against attachment and sale of agriculture land. Special provisions for sale of agriculture produce has been given in Order 21 Rules 74 & 75 CPC. It is also held that after coming into force of the Rajasthan Agricultural Credit Operations

(Removal of Difficulties) Act, 1974 (for short "the Act of 1974") whereby all restrictions, if it were there against the attachment and sale by procedure of Court in the matter of proceedings initiated by the Bank for recovery of the loan from the mortgaged agriculture land have been lifted and therefore, the agriculture land of the objector-petitioner can be attached and sold.

5. Learned counsel for the petitioner submits that Section 60 of the CPC itself provides that houses and other buildings with materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment of an agriculturist has been excluded from the provisions of attachment and sale in execution of the Civil Court's decree. According to learned counsel for the petitioner, in view of the Central Act governing the proceedings of the Civil Court itself has excluded the property sought to be attached by the decree holder, therefore, Court below was wrong in holding that the property in dispute can be attached and sold.

6. Learned counsel for the respondents submits that the property in dispute is admittedly agriculture land and has been mortgaged by the petitioner in favour of the non-petitioner Bank. The Court has passed the decree in favour of the Bank as back as in the year 1978. The respondents could not recover even the secured amount of the Bank's amount. It is also submitted that after coming into force of the Section 12 of the Act of 1974, there is no bar against the attachment and sale of the agriculture land in execution proceedings initiated by the Bank. This Section 12 of the Act of 1974 superseded all other provisions of law, which provides that anything contrary or prohibits attachment and sale of the agriculture property/land in the recovery proceedings initiated by the Bank. Learned counsel for the non-petitioners respondents relied upon the judgment of Hon'ble Supreme Court delivered in the case of Bank of Baroda v. Mohd. Bhai and Ors. (1), wherein the provisions of the Rajasthan Tenancy Act were considered and the Hon'ble Supreme Court held that a loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Rajasthan Tenancy Act and can, by no stretch of imagination, be said to be in respect of any matter arising under the Rajasthan Tenancy Act. Therefore, the provisions of Section 37 cannot be made applicable to this type of transaction.

7. I perused the reasons given in the impugned order in the light of the submission of learned counsel for the parties. It is clear from a bare reading of the Sub-clause (c) of the proviso to Section 60 of the CPC that the agriculture land has not been excluded by this provision from the attachment and sale in execution of a decree. Only houses and other buildings of an agriculturist have been saved from the attachment along with land immediately appurtenant to the houses and buildings, which are necessary for their enjoyment, which are belonging to an agriculturist or a labourer or a domestic servant and occupied by him. The legislature specifically has not included the agriculture land, in this provision, to exclude the agriculture land from the provision of attachment and

sale of the property in execution of a decree, therefore, this exclusion indicate that the law framers were conscious that an agriculturist may not be made homeless and therefore, specific provision has been made to exclude only home of agriculturist, but has not excluded agriculture land. We cannot insert the words "agriculture land" in the Sub-clause (c) of the proviso to Section 60. Therefore, I do not find any force in the submission of learned counsel for the petitioner.

8. So far as admission of Section 37 of the Rajasthan Tenancy Act that bar was created by the Act of 1955, but this is a general bar, applicable to all the process of the Civil Courts relating to the seizure attachment or sale of the agriculture land. This provision of general application was in force still the Act of 1974 has been enacted containing the provision lifting the bar of Section 37 also in the matter of recovery proceedings by the Banks through the Civil Courts and the mortgaged property is specifically included in the Section 12 of the Act and it made the mortgaged property liable for the sale in Civil Courts proceedings even if it is an agriculture holding. This subsequent enactment, which is specific in nature, will govern the field against the general provisions of Section 37 of the Act of 1955.

9. In view of the above and in view of the decision of the Hon"ble Supreme Court delivered in the case of Bank of Baroda (supra), I do not find any force in the submission of learned counsel for the petitioner.

10. The revision petition of the petitioner is, therefore, dismissed.