
(1993) 09 P&H CK 0157
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2577 of 1990

Sheela Rani

APPELLANT

Vs

The Punjab and Sind Bank Ltd. and Others

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 60(1)

Citation : (1995) 2 CivCC 113 : (1994) 106 PLR 583

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : Vanita Sapra, for the Appellant; H.S. Giani and G.S. Viridi, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—This revision petition is directed against the order dated August 20, 1990 passed by the executing Court whereby the objection of the petitioner, who is widow of Om Parkash Judgment debtor, was dismissed by holding that she cannot claim protection of Section 60(1)(ccc) of the CPC for attachment and sale in execution of a decree.

2. The controversy raised in this revision is, whether the house owned by Om Parkash Judgment debtor and inherited by his widow Smt. Sheela Rani the petitioner, is immune from attachment and sale in execution of a decree passed against Om Parkash.

3. Few facts relevant for the disposal of this revision may be noticed:

The Punjab and Sind Bank Limited filed a suit against Om Parkash and another for the recovery of money, which was decreed. The plaintiff took out execution. However, Om Parkash judgment debtor died during the pendency of the proceedings. The petitioner, widow of Om Parkash, was brought on the record. The house owned by Om Parkash judgment debtor was sought to be attached in execution of the decree in favour of the respondent-bank. An objection was

taken by Sheela Rani, petitioner that the house belonging to Om Parkash judgment debtor and inherited by her was not liable to be attached and sold in execution of the decree, the same being the only residential house in her possession. This objection was resisted by the decree-holder by contending that exemption from attachment and sale u/s 60(1)(ccc) of the Code is available only to the judgment debtor and not to his legal representatives and as such 1/3rd share in the house belonging to Om Parkash could be attached and sold in execution of the decree even after his death. The objection raised by the petitioner did not find favour with the executing Court and consequently, the objection petition was dismissed, by the order under revision. Aggrieved by the said order, the petitioner has filed the present revision.

4. Learned counsel for the petitioner vehemently contended that exemption from attachment and sale to a property u/s 60(1)(ccc) of the Code is attached to the property itself and not to the person holding it for the time being. In these circumstances, the learned counsel submitted that the house in question in the hands of Om Parkash was exempt from attachment and sale being the only residential house and consequently, it continues to be exempt, from attachment and sale even after his death, in the hands of his widow. The learned counsel in support of her contention relied upon *Firm Gurparshad Dewat Ram v. Kishan Chand* AIR 1938 Lah 608 wherein it was held as under:-

"As stated above, the decree was against Dulle and not against the legal representatives and as such it is being executed against the property of the deceased judgment debtor and not against the legal representatives personally. Exemption attaches to the property itself and not to the person holding the property for the time being and consequently if the property happens to come within the meaning of Cl.(c) of the proviso, it is immune from attachment. It is admitted that in the hands of Dulle the property was exempt under the said clause and we do not consider that exemption vanishes merely because Dulle dies and some other person steps into his shoes as his legal representative."

5. Learned Counsel for the petitioner placed further reliance on *Smt. Pushpmala Jain v. Bank of Baroda* (1991) 97 P.L.R. 228. In that case, the defendant-owner of the house died during the pendency of the suit and the property being the house was attached before judgment under the provisions of Order 38 Rule 5 of the Code. In execution of the decree passed against the judgment debtor, his widow filed an objection petition claiming that the property being residential house and she being residing therein along with her sons, was exempt from attachment. The objection petition filed by her was dismissed. A finding was recorded by the High Court in the revision that she was residing with her children in the Second floor and consequently the house was exempt from attachment and sale in execution of the decree and was, therefore, not liable to be attached and sold, in execution of the decree. This judgment apparently supports the contention of the learned counsel for the petitioner but in fact, it is not an authority for the proposition canvassed in this petition. The question, whether a

residential house in the hands of a widow or legal heirs of a judgment debtor is exempt from attachment and sale in execution of the decree passed against the principal judgment debtor, was neither debated nor considered in the above noticed case. The said judgment as noticed above, proceeds on the assumption that the house in possession of the judgment debtor, a part of which was under tenancy, was liable to attachment and sale in execution of the decree.

6. The question posed in this revision petition has been directly answered in *Yogesh Sharma and Others Vs. Devi Dayal Ors.*, . In that case, a suit was filed on the basis of a pronote, against one Manohar Lal, who died during the pendency of the suit. His legal representatives were brought on the record of the suit and ultimately a decree was passed against them. The house owned by Manohar Lal devolved on his sons and a daughter, who were brought on record as his legal representative in the suit. In execution proceedings, the legal representatives raised an objection that the house owned by Manohar Lal was not liable to attachment and sale in execution of the decree. The question posed before the Delhi High Court was "Does the protection given to the judgment debtor also extend to his legal representatives?" This question was answered by observing as under:-

"In my opinion the sons of Manohar Lal, the present objectors, are not entitled to the benefit of clause (ccc). They are not the judgment-debtors. They are the legal representatives of the judgment debtor. The judgment-debtor was Manohar Lal. He took the loan. He executed the pronote. The suit was brought against him. In the course of the suit he died and his legal representatives were brought on the record of the suit under Order XXII Rule 4, Code of Civil Procedure. Obviously they were brought in their representative capacity."

Not only this, after noticing the provisions of sub-section (2) of Section 50 of the Code, the Court went on to observe as under:-

" It, therefore, comes to this. The sons are the legal representatives of Manohar Lal deceased. They cannot be called judgment-debtors. If they are not the Judgment-debtors they are not entitled to exemption under Cl.(ccc). Their liability is limited to the estate of the deceased in their hands. The house in question was the property of the judgment-debtors Manohar Lal. It has devolved on the legal representatives. It can be attached and sold. This is my conclusion."

While concluding above, the judgment of the Lahore High Court in *Firm Gurparshad Dewat Ram's* case (*supra*) was also taken into consideration. The judgment of the Lahore High Court was distinguished, the case therein being under clause (c) of subsection (1) of Section 60 of the Code relating to an agriculturist. It was also noticed that the provisions of clause (c) *ibid* are differently worded from clause (ccc) of subsection (1) of Section 60. The judgment of the Delhi High Court noticed above is thus a clear authority for the proposition that the property owned by a judgment which has devolved on his heirs, is not exempt from attachment and sale in execution of decree under the

provisions of clause (ccc) of subsection (1) of Section 60 of the Code.

7. The matter as regards this Court is not res integra. In *K.L. Bawa (deceased by L.R.) v. Basant Textiles, Abu Lane, Meerut* (1982) 84 P.L.R. 258 this Court happened to consider precisely the same question as has been raised in this revision. In that case, the objection that the house was not liable to attachment and sale in execution of the decree was dismissed. During the pendency of the revision Petition, the judgment-debtor died and his legal representatives were brought on record. In that context, it was contended by the legal representative that the house in question being the only residential house was exempt from attachment and sale under clause (ccc) of subsection (1) of Section 60 of the Code. Learned Judge after considering the matter observed under: -

"K.L. Bawa deceased was the judgment-debtor against whom the money decree was passed. The protection from attachment of one main residential house under cl. (ccc) was available to him in person. His widow Jagdish Rani being not a judgment-debtor cannot avail of the protection under el.(ccc). The protection under clause (ccc) which was available to K.L. Bawa, judgment-debtor (now deceased), therefore, came to an end with his death on October 14, 1981. The protection under cl. (ccc) being available to the deceased in person would not pass on to his widow as his legal representative. Under these circumstances, there is no escape from the conclusion that the death of the judgment-debtor on Oct. 14, 1981, has rendered the present revision infructuous."

8. It may also be noticed that clause (c) of subsection(1) of Section 60 of the Code provides protection from attachment and sale to houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant-thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him. This shows that exemption is available not only to the judgment debtor but to any person who may be in possession of this property and is an agriculturist. The word "Judgment-debtor" is conspicuously missing in clause (c) of subsection (1) of Section 60 whereas clause (ccc) of subsection (1) of Section 60 provides protection against attachment and sale of one main residential house belonging to a judgment debtor. Thus, there is a clear distinction between the two clauses of subsection (1) of Section 60 of the Code. The former provides protection to an agriculturist in respect of houses and other buildings belonging to and occupied by him whereas the latter clause provides protection to a judgment debtor only in respect of the main residential house occupied by him. The judgment of the Lahore High Court in *Firm Gurparshad Dewat Ram's* case (supra) renders no assistance to the petitioner as that was not a case under clause (ccc) of subsection (1) of Section 60 but was a case under clause (c) of subsection (1) of Section 60 wherein protection in respect of attachment and sale of houses and other buildings is available to an agriculturist.

9. In the above situation, following the judgment of this Court in *K.L. Bawa's* case (supra) I conclude that the property in question in the hands of widow of

the deceased, Om Parkash judgment debtor is not exempt from attachment and sale in execution of the decree, under clause (ccc) of sub section (1) of Section 60 of the Code.

10. For the reasons stated above, the revision fails and is hereby dismissed. There shall, however, be no order as to costs.