(1982) 05 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : O.M.P. No. 109 of 1981 in Execution Petition No. 1 of 1978

State Bank of India APPELLANT

Vs

Ram Lok Sood RESPONDENT

Date of Decision : 24-05-1982

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Himachal Pradesh Land Revenue Act, 1954 — Section 103, 4, 42, 43, 73

Citation : (1982) 11 ILR HP 415

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : K.D. Sood, for the Appellant; Yoginder Paul, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Gupta, J.—This objection petition under Order 21, Rule 58 of the CPC has been filed by Verinder Kumar claiming that the property measuring 9 bighas 4 biswas situated in Village Kuleth, Sub-Tehsil Rajgarh, District Sirmur, bearing khasra No. 132/1 min was purchased by him in an auction and that the same is not liable to be attached and sold in execution of a decree obtained by the decree-holder (State Bank of India) against the judgment-debtor (Ram Lok Sood). It is alleged in this petition that judgment-debtor, Ram Lok, had raised on industrial loan of Rs. 4,500/- from the State of Himachal Pradesh in the year, 1966, and that the said loan was recovered as arrears of land revenue by sale of the property of the judgment-debtor. The present objector gave the highest bid and the sale was confirmed in his favour by the Commissioner, with the result that a sale certificate was issued in his favour on 8th July, 1977. It is further stated that the decree-holder cannot seek the attachment and sale of the afore-mentioned land and the structure as also the orchard standing on the said land, as the objector (Verinder Kumar) is its absolute owner. It is also alleged that the objector is in possession of this property and has purchased this property free from all encumbrances. The petition was filed on 9th June, 1981.

2. A reply was filed by the decree-holder, alleging that this property was mortgaged with the decree-holder on 1st November, 1968 and 30th June, 1970, for a total amount of Rs. 50,000/- along with interest. The decree-holder filed a suit for recovery of the amount with a prayer for the sale of the mortgaged property on 28th April, 1974. A preliminary decree was passed on 15th June, 1974, while a final decree was passed on 12th April, 1977. According to the decree-holder the loan advanced to judgment-debtor was a secured loan through a registered mortgage deed and, therefore, it cannot be said that the objector is the absolute owner of the property. It is also alleged that the objections are not maintainable and the same have been filed with great delay.

3. In support of the objections, the objector filed a certificate of sale, dated 8th July, 1977, issued by the Collector, Sirmur district, showing that the land measuring 9 bighas, 4 biswas of khasra No. 132/1 was sold in his favour. The objector also filed an affidavit in support of the allegations made by him wherein he had stated that the sale in his favour took place on 18th August, 1975, and that he made valuable improvements on the land.

4. Shri Yoginder Paul, learned Counsel appearing on behalf of the objector contended that the judgment-debtor had not paid the industrial loan raised by him and the same could be recovered as arrears of land revenue by sale of the property of judgment-debtor. The property of the judgment-debtor was, therefore, put to auction and the objector purchased the same in an open auction. The learned Counsel contended that the property was sold in favour of the objector free of all encumbrances and, therefore, this property (purchased by him) is not liable to attachment and sale in execution of the decree. He referred to Section 82 of the Himachal Pradesh Land Revenue Act (hereinafter called the Act) in support of his contentions.

5. Shri Kapil Dev Sood, learned Counsel for the decree-holder, contended that the loan raised by the judgment-debtor from the decree-holder was on the basis of a registered mortgage deed. It was contended that the provisions of Section 82 of the Act are not attracted in the present case.

6. I have considered the contentions of the learned Counsel for the parties.

7. Section 4 of the Act gives the definitions which read as follows:

4. Definitions.- In this Act unless there is something repugnant in the subject or context

(1) and (2) xxx xxx

3. "arrear of land revenue" means land revenue which remain un-paid after the date on which it becomes payable;

4. "defaulter" means a person liable for an arrear of land revenue and includes a person who is responsible as surety for the payment of the arrear;

5. "estate" means an area:

(a) for which a separate record-of-rights has been made, or

(b) which has been separately assessed to land revenue, or would have been so assessed if the land revenue had not been released, compounded for or redeemed, or

(c) which the State Government may, by general rule or special order, declare to be an estate;

(6) xxx xxx

7. "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners;

8. "incumbrance" means a charge upon or claim against land arising out of private grant or a contract;

(9) xxx xxx

(10) "land revenue" includes assigned land revenue and any sum payable in respect of land, by way of quit-rent or commutation for service, to the State or to a person to whom the State has assigned the right to receive the payment.

(11) to (21) xxx xxx

8. Chapter VI of the Act deals with the collection of land revenue. In this chapter, Section 74 reads as follows:

74. Process for recovery of arrears.- Subject to other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following processes, namely:

(a) by service of a writ of demand on the defaulter;

(b) by arrest and detention of his person;

(c) by distress and sale of his movable property and uncut or ungathered crops;

(d) by transfer of the holding in respect of which the arrear is due;

(e) by attachment of estate or holding in respect of which the arrear is due;

(f) by annulment of the assessment of that estate or holding;

(g) by sale of that estate or holding;

(h) by proceedings against other immovable property of the defaulter.

Clauses (e), (f) and (g) of Section 74 can be made applicable if the arrear of land-revenue is due in respect of that estate or holding but Clause (h) can be applied with respect to the other immovable property of the defaulter.

9. Sections 78 - 80 of the Act deal for processes u/s 74(e) and 74(g) where the attachment of the estate or holding in respect of which arrear of land revenue

due is effected.

10. Section 81 deals with the sale of the estate or the holding in respect of which the arrear of land-revenue is due.

11. Section 82 of the Act deals with the effect of sales made u/s 81.

12. Section 83 deals with the proceedings against other immovable property of the defaulter.

13. To decide the controversy between the parties it will be better to re-produce Sections 81 - 84 of the Act:

81. Sale of estate or holding. When an arrear of land revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the Commissioner, may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrear is due:

Provided that land shall not be sold for the recovery of:

(a) to (c) xxx xxx

82. Effects of sale on encumbrances.- (1) Land sold under the last foregoing section shall be sold free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the land shall become void as against the purchaser at the sale.

(2) Nothing in Sub-Section (1) shall affect:

(a) a tenant''s right of occupancy, unless the right was created by the defaulter himself; or

(b) any lease at a fair rent, temporary or perpetual, for the erection of a dwelling house or manufactory, or for a mine, garden, tank, canal, place of worship or burial ground, so long as the land continues to be used for the purposes specified in the lease; or

(c) any encumbrance, grant, contract or right of occupancy specially saved by order of the Financial Commissioner and proclaimed as hereinafter provided.

83. Proceedings against other immovable property of defaulter.- (1) If the arrear cannot be recovered by any of the processes hereinafter provided, or if the Commissioner considers the enforcement of any of those processes to be in-expedient, the Collector may, where the defaulter owns any other estate or holding or any other immovable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due:

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no encumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this section against immovable property other than the land in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3) The Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interests of the defaulter in the property have been sold for the recovery of the arrear.

(4) Any private alienation of the property, or of any interest of the defaulter, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section the Collector shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land revenue is due.

84. Remedies open to person denying his liability for an arrear.- (1) Notwithstanding anything in Section 73 when proceedings are taken under this Act for the recovery of an arrear the person against whom the proceedings are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of a payment and singed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under Sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate.

14. In the present case the judgment-debtor had raised a loan from the Government and did not repay the same with the result that the Government had to recover the amount of loan as an arrear of land revenue u/s 103 of Chapter VII of the Act which reads as:

CHAPTER VII RECOVERY OF OTHER DEMANDS BY REVENUE OFFICERS

103. Other sums recoverable as arrears of land revenue.- In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered, namely:

(a) fees, fines, costs and other charges, including the village officers fess payable under this Act;

(b) revenue due to the Government on account of pasture or other natural products of lands, or on account of mills, fisheries or natural products of water, or on account of other rights described in Section 42 or Section 43 in cases in which the revenue so due has not been included in the assessment of an estate;

(c) fees payable to local bodies including the Panchayat formed under the Himachal Pradesh Panchayati Raj Act, 1968 (19 of 1970) for the use of or benefits derived from the following works:

(i) the constructions and repair of embankments and the supply, storage and control of water for agricutural purposes;

(ii) the preservation and reclamation of soil, and the drainage and reclamation of swamps;

(d) sums leviable by or under the authority of the State Government as water-rates, or on account of the maintenance or management of embankments and other irrigation works, not being sums recoverable as arrears of land revenue under any enactment for the time being in force;

(e) sums payable to the State Government on account of rent and other dues in respect of land; and

(f) sums payable to the State Government by a person who is surety for the payment of any of the foregoing sums or of any other sum recoverable as an arrear of land revenue.

15. If the scheme of the Act is scrutinized then it is apparent that if the estate or holding is sold in respect of the recovery of arrears of land revenue due on that estate or holding then Section 82 will be applicable. Section 82 is only applicable if the sale is effected under the provisions of Section 81. On the other hand, if the sale is not effected u/s 81, then the provisions of Section 82 will not be applicable. Hence Section 82 is not applicable when the proceeding for sale are taken u/s 83.

16. As the amount of loan raised by the judgment-debtor was realised under the provisions of Section 103(f) as arrear of land-revenue, but this arrear of land-revenue was not on account of any land revenue due on the estate or holding which was sought to be sold in auction, therefore, Section 83 of the Act will be applicable and Section 82 of the Act is not attracted in the present case.

17. In view of the above discussion the property conveyed to the objector will be subject to the claim of the decree-holder. The present objection petition is accordingly dismissed but with no order as to costs.

