

(2001) 11 DEL CK 0114

In the Delhi High Court

Case No : EAs 482-83/01 in Ex. 78 of 2000

Vipin Kumar

APPELLANT

Vs

Phoenix Airlines Pvt. Ltd. and Others and Vijay Adhlakha

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58, 64

Citation : (2001) 11 DEL CK 0114

Hon'ble Judges : B.N. Chaturvedi, J

Bench : Single Bench

Advocate : S.P. Sharma, for the Appellant; Mukul Sharma, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Chaturvedi, J.—Pursuant to a decree dated 5.5.2000 in suit No. 939/98, titled "Vipin Kumar v. Phoenix Airline Pvt. Limited and Ors. ", for Rs. 36,96,000/- with pendente lite and future interest, passed against the judgment debtors/defendants, an execution petition No. 78/2000, with a list of properties, including property No. 55A, Block M-5, NIT, Faridabad, was filed. Apart from certain other properties, which are presently not relevant for consideration, property No.5M-55A, NIT, Faridabad, said to be owned by Shri B.K. Menon, judgment, was attached on 12th of June, 2000. An objection petition being EA.No.487/2000 under Order XXI Rule 58 CPC purported to be behalf of one Shri Vijay Adlakha S/o Shri Shyam Lal Adlakha, R/o 5M-55A, NIT, Faridabad, was filed on 6th of November, 2000, which was dismissed vide order dated 30.4.2001 reading to the following effect:-

"EA.no.487/2000

The contention of the objector is that the had purchased the property bearing No.55A, Block 5M, NIT, Faridabad. In support of his contention, a sale deed dated 27th July, 2000 registered on 28th July, 2000 has been filed.

From the record it is clear that warrants of attachment were passed on 15th May,

2000.

Pursuant to the order dated 15th May, 2000, the aforesaid property was in fact attached on 12th June, 2000.

In view of the provisions of Section 64 of the Code of Civil Procedure, the sale transaction entered into between the Judgment Debtor and the Applicant Vijay Adlakha with regard to the sale of the aforesaid property on 27/28th July, 2000 is void.

Under the circumstances, the application is dismissed.

The property bearing No.55-A, Block 5M, NIT, Faridabad sold by public auction. Warrants for sale be given dusty."

2. The property No.5M-55A, NIT, Faridabad, was, thus, ordered to be put to sale consequent upon dismissal of EA.487/2000. Accordingly, a sale proclamation fixing 6th of November, 2001 between 10.00 a.m. to 1.00 p.m. for sale of the same was directed to be published on or before 20th of October, 2001 in two newspapers-- Statesman(English) and Dainik Jagaran(Hindi)-- apart from displaying the same on the notice board of this Court and that the District Courts, Faridabad. A copy of sale proclamation was directed to be affixed at a conspicuous place of the said property as well.

3. According to the learned counsel for the decree holder, all the formalities have been completed and now the property in question is to be put to sale by public auction on 6th of November, 2001 at the appointed time.

4. Present objection petition was filed on 29th of October, 2001 seeking recall of the order of attachment and sale of the property NO. 5M-55A, NIT, Faridabad, and release of the same. Pending disposal of the petition, suspension of the sale by auction on 6th November, 2001, has also been sought. Like earlier EA.No.487/2000, petition on hand also purports to be behalf of Shri Vijay Adlakha S/o Shri Shyam Lal Adlakha, wherein it is pleaded; "....JD, B.K.Menon, in conspiracy and collusion with others, including members of his family and the said Dalip Kumar, has committed perjury and played an egregious and sinister fraud with the objector/applicant, and the Court.... He also unknown to the Objector/Applicant caused the motion of forged and fabricated Execution Application No. 487/2000, along with accompanying forged and fabricated applications and affidavits on his behalf so as to completely deprive him of any lawful defense of the aforesaid property lawfully purchased by him, in good faith and for valuable consideration..."

5. Present objector/petitioner, thus, disowns the EA.No.487/2000 under Order XXI Rule 58 CPC and the accompanying application EA.No.488/2000 u/s 151 CPC, as having been made by him earlier. He claims to have been ignorant of the attachment of the property in question until he made the instant objection petition. It is pleaded that an agreement for sale in relation to the property in question was executed between him and Shri B.K. Menon, judgment debtor, on

24th of March, 2000, and that he purchased the same by means of a registered sale deed dated 28.7.2000, in pursuance of that agreement for sale, in good faith for a valuable consideration. Accordingly, it is submitted that the property in question is not liable to sale being owned by him and not the JD(s).

6. Learned counsel for the decree holder, questioning the maintainability of the objection petition, contended that in view of the dismissal of EA.No.487/2000, it is not open to the objector to come up with yet another petition under Order XXI Rule 58 CPC. He pointed out that the order dated 30.4.2001 dismissing EA.487/2000, is an appealable one and no appeal having been filed against it, the same has become final and, thus, the same very issue, which constitutes the subject matter of EA.487/2000, cannot be allowed to be re-agitated. It was contended that the property in question was attached on 12th of June, 2000 and, thus, the alleged transfer thereof on 28th of July, 2000 in favor of the objector/petitioner is void and legally inconsequential. Countering the plea of purchase of the property in question in his favor for valuable consideration in pursuance of alleged pre-attachment agreement for sale, the learned counsel for the decree holder pointed out that the objector/petitioner was fully ware of the attachment of the property and his plea of purchasing the same in good faith is entirely unfounded. Alternatively, it was contended that the sale deed in question, by virtue of which, transfer of the property NO.5M-55A, NIT, Faridabad and ownership thereof is being claimed by the objector/petitioner, actually relates to a piece of land only adjoining the three-storeyed built up property under attachment, and, Therefore, he has no right, title or interest in the attached property to resist the sale thereof by public auction.

7. Primarily, two points for consideration; firstly if the EA.487/2000, under Order XXI Rule 58 CPC filed earlier, is not attributable to the objector/petitioner, and, secondary, if the alleged sale of the attached property constitutes a valid basis to recall the order for sale thereof and to vacate the attachment in relation thereto.

8. In regard to the first point, few facts may be taken note of. It was submitted on behalf of the objector/petitioner that prior to filing of present petition, he was not aware of the factum of attachment of the property. There is mention in the petition that the objector/petitioner was put in physical possession of property in question on the date of execution of the agreement for sale dated 24.3.2000, though the agreement for sale does not support such averment. If it is accepted that he was put in physical possession of the property on 24th of March, 2000, it would appear that the attachment of the property was effected on 12th of June, 2000 while he was in possession thereof. As per report of the bailiff, apart from affixing a copy of the attachment order at a conspicuous part of the property, attachment was also effected by beat of drums. A photograph of the copy of the attachment order affixed at the property has been filed by the decree holder with his reply to show that affixation of a copy of the attachment order had actually taken place at the spot. In such a situation, it is difficult to accept that the objector/petitioner was ignorant of the property having been put under

attachment on 12th of June, 2000. In spite of the fact that the objector/petitioner claims to have had been put in possession of the suit property pursuant to the agreement for sale dated 24.3.2000, in part performance of contract, he did not file any objection against the attachment. EA.487/2000 was filed on 6th of November, 2000. The case was to come up before the Court on 7th November, for passing an order for sale of the property in question. The timing of filing the objections is material. Maybe, that in spite of being in the know of the attachment of the property, the objector/petitioner waited for filing objections against the attachment until the sale deed dated 24.3.2000 had been executed in his favor and an order for sale was likely to be passed.

9. A reply to the EA.487/2000 was filed by the decree holder and a copy thereof along with copies of affidavits and index etc. was sent to the objector/petitioner at his residential address, i.e., 5M-55A, NIT, Faridabad, by registered post. In ordinary course, the same would be presumed to have been delivered to him. Thus, there is little substance in the plea that the objector/petitioner was unaware of filing of the EA.487/2000.

10. Apparently, Shri B.K. Menon, judgment debtor, had no stake in the attached property after its alleged transfer to the objector/petitioner. There could be, thus, no reason for him to have EA.487/2000 filed in the name of the objector/petitioner, as alleged. It is not easy to believe that in spite of impending risk of the property in question being eventually put to sale, in view of attachment thereof, the objector/petitioner would have refrained from filing objections against the attachment. It is interesting to note that EA.487/2000 was filed along with photocopies of the agreement to sell dated 24.3.2000 and sale deed dated 28.7.2000. Both the said documents could be expected to be in possession of the objector/petitioner only or at best with Shri B.K. Menon, judgment debtor. As already observed, there is no basis to find that the said judgment debtor would have had any interest left in the attached property to be anxious to get the same released from attachment if there was a genuine sale thereof in favor of the objector/petitioner.

11. In that facts and circumstances noted above, the plea of the objector/petitioner that EA.487/2000 was moved at the instance of Shri B.K. Menon, judgment debtor, and that he had knowledge of the pendency of the same is totally unacceptable. There is rather a clear indication that EA.487/2000, in all probabilities, was filed at his behest, or, in any case, he had full knowledge of such objection petition having been filed in his name. Thus, it is not permissible to allow to re-agitate the same very issue which was finally adjudicated upon in the course of proceedings relating to EA.487/2000. Present objection petition is, accordingly, liable to be dismissed on this ground alone.

12. Referring to the decisions in Vannarakkal Kallalathil Sreedharan Vs. Chandramaath Balakrishnan and Another, ; " Angu Pillai and Others Vs. M.S.M. Kasiviswanathan Chettiar and Others, ; and Narayanan Nair Ramakrishnan Nair and Another Vs. Zacharia Kuriakose (died) and Others, in the context of second

point, the learned counsel for the objector/petitioner sought to contend that as the sale of the property in question was effected in pursuance of a pre-attachment agreement for sale dated 24.3.2000, notwithstanding attachment, such sale cannot be held void in terms of Section 64 CPC. The proposition of law laid down in the said decisions, however, when applied to the case on hand, turns, out to be of no assistance to advance the plea of the objector/petitioner against attachment and scheduled sale of the property in question. It may be noted that it is the property No.5M-55A, NIT, Faridabad, which is under attachment and scheduled to be sold on 6th of November, 2001. The agreement for sale dated 24.3.2000 and the sale deed dated 28.7.2000 do not pertain to this property. As per certified copy of site plan filed by the decree holder with his reply, it is noticed that the entire area of house No.5M-55A, NIT Faridabad, is fully built up with no open land. House No.5M-55 is another property on the southern side of house No.5M-55A, NIT, Faridabad, which is shown to be owned by one Shri Chunni Lal and not by Shri B.K. Menon, judgment debtor. As a matter of fact, the question of ownership of House No.5M-55 NIT, Faridabad is not at all relevant for consideration and even if there has been a valid transfer of that property in favor of the objector/petitioner, such transfer has no bearing on the attachment and scheduled sale of property No.5M-55A, NIT, Faridabad. The objector/petitioner is, thus, found to have no right, title of interest in the property under attachment justifying resistance on his part to the scheduled sale thereof.

13. Finding no merit, the objection petition, with accompanying application, is dismissed with compensatory costs of Rs. 10,000/-