

KIRAN BALA
v.
SURINDER KUMAR

MAY 2, 1996

[MADAN MOHAN PUNCHHI AND K.T. THOMAS, JJ.]

Code of Civil Procedure, 1908 :

S.60(1)(ccc)—Residential House in occupation of judgment-debtor—Exemption from attachment or sale in execution proceedings—In execution of decree in a money suit, residential house of judgment-debtor situated in State of Punjab was sought to be attached and sold—Objection of judgment-debtor on the plea of protection under the State Amendment of the provision resisted by decree holder on the ground that the house had been subjected to transfer even though such transfer had been held "null and void" in another suit, and, therefore, by virtue of the conduct of the judgment-debtor, she was not entitled to the protection—Held, the effect of declaring the sale null and void would be that the judgment-debtor got a negative declaration that she continued to be the owner-in-possession of the house and as such, she would be entitled to claim exemption from attachment or sale—Objection of judgment-debtor is sustained with the result that the house can not be attached or put to sale in execution of the decree.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7794 OF 1996.

From the Judgment and Order dated 3.5.95 of the Punjab & Haryana High Court in C.R. No. 1744 of 1995.

Mrs. Rekha Palli and Atul Sharma for the Appellants.

S.K. Bagga, Mrs. Shurestha Bagga, Ms. Tanuj Bagga and Ms. Monika Bhanot for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal arises against an order of limine dismissal of a revision

A petition passed by the Punjab and Haryana High Court.

The appellant, Kiran Bala, faced more than one suit for recovery of monies in the Court of the Additional Senior Sub-Judge, Dhuri, Punjab. Civil Suit No. 636 of 6.8.1991 was filed by the plaintiff-respondent against her in order to recover Rs. 19,125 inclusive of interest. Apprehending that she may not alienate her property the plaintiff-respondent obtained on 24.7.1991 an order of maintenance of status quo. Despite the said order, the appellant on 29.7.1991 sold her residential house in favour of her daughter and her husband's brother for a sum of Rs. 20,000 mentioning in the sale-deed the necessity of selling it to pay of her debts. This development got entangled in the suit and was put to issue. Specifically Issue No.3 raised was to the following effect :

"Whether the sale deed dated 29.3.1991 executed by defendant No. 1 in favour of defendants No. 2 and 3 to defeat and delay the claim of the creditors including plaintiff?"

The finding recorded by the Court was that the transfer was hit by the provisions of Section 53 of the Transfer of Property Act, being a fraudulent transfer as the same had been effected to defeat and delay the claim of the creditor-plaintiff. The sale thus having been avoided, was declared null and void by the Trial Court vide order dated 29.7.1994. The suit otherwise was decreed in the sum of Rs. 19,125 with costs and future interest @ 6 per cent per annum from the date of the suit till realisation.

For the money liability incurred by the appellant in another suit, execution petition was filed by the decree-holder plaintiff-respondent and the house, transfer of which had been declared 'null and void' in decision in C.S. No. 636 of 6.8.1991, was sought to be attached and sold in execution of the decree. To that, objection was raised by the appellant-judgment debtor that the said house was her main residential house in her occupation and was not specifically charged with the debts sought to be recovered. It was pleaded that these facts entitled the appellant-judgment debtor to protection of Section 60(1)(ccc) of the Code of Civil Procedure, as applicable to the State of Punjab by State Amendment, which does afford such protection. Such claim of the appellant as to the house in question being exempt from attachment or sale, was resisted by the decree-holder on the specious plea that it had been subjected to transfer, even though such transfer had been held 'null and void' in C.S. No. 636 dated 6.8.1991,

and therefore on account of her conduct, the appellant was not entitled to any relief. This defence apparently found favour with the Executing Court on attention being invited to the judgment in the said Civil Suit. The import of Section 60 C.P.C. and the relevant clause applicable to Punjab, granting exemption from attachment or sale of residential house in occupation of the judgment-debtor was not adverted to at all. The objection petition was thus dismissed on 28.3.1995. The revision petition against that order was dismissed by the High Court in limine on 3.5.1995. Hence this appeal. A
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Having set out the above facts, it is crystal clear to us that we have to grant relief to the appellant. It is evident that she sold the house in question ostensibly to pay off her debts but the sale has been declared by the Civil Court, deciding C.S. No. 636 dated 6.8.1991, to be null and void. The effect of that decision would be that the said sale becomes *non est* and the parties reverted to their original position; meaning thereby that the appellant got a negative declaration that she continued to be the owner-in-possession of the house in question. On that premises, what sequently follows, cannot be withheld merely on account of the conduct of the appellant. Since the legal consequence is that she would be the owner-in-possession of the house, she would definitely be entitled to claim its exemption from attachment or sale under sub-clause (ccc) of Section 60(1) of the Code of Civil Procedure, afore-referred to. Had the claim of the plaintiff in the said suit been negatived as regards the transfer being with the object of defeating or delaying her creditors, the house in question would necessarily have been out of the reach of the decree-holder. Merely because it has now been reverted back to the judgment-debtor that fact, by itself, would not disentitled the judgment-debtor from raising the legal plea of exemption. In this view of the matter, we are convinced that the executing Court was in error in dismissing the objection petition of the appellant and so was the High Court in dismissing the revision petition in limine. C
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▪ We therefore, allow this appeal, set aside the aforesaid orders and sustain the objection of the appellant with the result that the said house cannot be attached or put to sale in execution of the decree. G

No costs.

R.P.

Appeal allowed.