

VIJAY KUMAR v. M/S SHIV LAL RAJ KUMAR AND SONS,(2022-1)205 PLR 496

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Rajbir Sehrawat.

VIJAY KUMAR – Petitioner,

Versus

M/S. SHIV LAL RAJ KUMAR AND SONS and others – Respondents.

Civil Revision No. 7692 of 2019 (O&M)

Civil Procedure Code, 1908 (V of 1908) Order 38, Rule 10 - Apparent that the attachment before judgment shall not affect the rights of the persons who are not parties to the suit - Such attachment also does not bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of the decree - Thus, the intention of the legislature with respect to the attachment before judgment is clear from the reading of Rule 10 of Order XXXVIII CPC - In that context, Section 63 is required to be examined - It becomes apparent that the legislature, while making the provision for execution of the decree passed by several courts, lay down a procedure for their execution - In the considered opinion of this Court, slight insignificant infringement of the procedural law does not result in invalidating the court auction.

Mr. Sanjiv Kumar Aggarwal, for the petitioner. Mr. Sushil Jain, for respondent No.1. Mr. Vijay Kumar Jindal, Senior Advocate with Mr. Akshay Jindal, for respondent No.2 and 3.

Anil Kshetarpal, J. - (2nd September, 2021) -

1. Through this revision petition, the petitioner calls into question two orders, passed by the Executing Court on 25.11.2019.

2. Mr. Shiv Lal Raj Kumar and Sons filed a civil suit on 07.04.2015 for recovery of the amount against M/s Sidhi Vinayak Rice Mill. The aforesaid suit was decreed on 05.01.2018. The petitioner (Vijay Kumar), being Karta of M/s Vijay Kumar Satish Kumar, also filed a suit against M/s Sidhi Vinayak Rice Mill on 03.03.2015. In the suit filed by Vijay Kumar, the property in question was attached under Order XXXVIII of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") i.e. attachment before the judgment. Ultimately, the suit filed by Vijay Kumar was decreed on 25.03.2019 for recovery of 2,14,20,226/-. In the decree passed in favour of M/s Shiv Lal Raj Kumar and sons, the property in dispute i.e. two shops were attached and thereafter, sold in the court auction. The auction purchasers have deposited the amount and the sale certificates have been issued and registered with

the Sub Registrar.

3. The petitioner-Vijay Kumar filed objections questioning the correctness of the court auction which were dismissed by the Executing Court.

4. Heard the learned counsel for the parties and with their able assistance, perused the paper-book.

5. The learned counsel representing the petitioner-Vijay Kumar, while drawing attention of the Court to Section 63 CPC, contends that the decree could be executed only in accordance with the aforesaid provision. He contends that since the property in question was attached vide an order dated 30.07.2015 by ordering the attachment before judgment, therefore, in the execution of the decree passed on 05.01.2018, the property could not be auctioned in execution of another decree. Section 63 CPC is extracted as under:-

“63. Property attached in execution of decrees of several Courts.—(1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

Explanation.—For the purposes of sub-section (2), “proceeding taken by a Court” does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him”.

6. On the other hand, the learned counsels representing the auction purchasers as well as the decree holder-M/s Shiv Lal Raj Kumar and Sons, have drawn attention of the Court to Order XXXVIII Rule 10 CPC, which reads as under:-

“10. Attachment before judgment not to affect rights of strangers nor bar decree-holder from applying for sale.—

Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree”.

7. Learned counsel representing the respondents contends that the attachment before judgment shall not affect the rights existing prior to attachment.

8. Keeping in view the aforesaid facts, the question arises as to whether the Executing Court has correctly proceeded with the execution of the decree in the suit filed by M/s Shiv Lal Raj Kumar. It would be noted here that the learned counsel representing the decree holder has drawn the attention of the Court to the list of properties, which were attached in

the suit filed by the petitioner-Vijay Kumar, which is extracted as under:-

“1. That land measuring 27 K 10 M entered at Khewat No. 81 Khatoni No. 89 bearing rect. No. 2 Killa No. 8, 13, 14, 17, 18, 24/1/1 total kittas 6 according to the jamabandi for the year 2008-09 relating to village Dobwa Tehsil Nilokheri Distt. Karnal, is situated within the revenue estate of aforesaid village.

2. That land measuring 44 K 10 M entered at Khewat No. 10 Khatoni No. 13 bearing rect. No. 6 Killa No. 25/2, rect. No. 7 Killa No. 18/2, 19/2, 20/2, 21, 22, 23 total kittas 7 according to the jamabandi for the year 2010-11 relating to village Chopri Tehsil Nilokheri Distt Karnal, is situated within the revenue estate of aforesaid village.

3. That land measuring 28 K 15 M entered at Khewat No. 350 Khatoni No. 410 bearing rect. No. 64 Killa No. 11, 12, 19, 20 total kittas 4 according to the jamabandi for the year 2009-10 relating to village Pakhana Tehsil Nilokheri, Distt. Karnal, is situated within the revenue estate of aforesaid village.

4. That land measuring 622/1262 share out of total land 31 K 11 M entered at Khewat No. 351 Khatoni No. 411 bearing rect. No. 64 Killa No. 3, 8, 13, 18 total kittas 4 according to the jamabandi for the year 2009-10 relating to village Pakhana Tehsil Nilokheri Distt. Karnal, is situated within the revenue estate of aforesaid village.

5. That a shop bearing M.C. No. 217 measuring 20×85 is situated in the market committee, Karnal, ownership of Rameshwar Dass (defendant No.2) & Ashok Kumar (defendant No. 4) in equal shares vide allotment letter dated 20/02/1999. The photocopy of said allotment letter is attached herewith.

6. That a shop bearing M.C. No. 65 measuring 20×85 is situated in the market committee Taraori, ownership of Ashok Kumar (defendant No.4) vide allotment letter No. 1107. The photocopy of said allotment letter is attached herewith.

7. That a shop bearing M.C. No. 58 measuring 20×85 is situated in the market committee Taraori, ownership of M/s Banarsi Dass Suresh Kumar Tararori who is a commission agency firm of which Suresh Kumar S/o Rameshwar Dass S/o Banarsi Dass (defendant No.2) is the sole proprietor. The photocopy of allotment letter & convince(sic) deed is attached herewith.

8. That a shop bearing M.C. No. 234 measuring 20×50 is situated in M.C. Taraori Distt. Karnal, ownership of M/s Sidhi Vinayak Rice Mill Karnal vide allotment letter No. 219 dated 09.02.2011. The photocopy of said allotment letter is attached herewith.

9. That a residential house bearing No. 1334, Sector 06, HUDA, Karnal, ownership of Rameshwar Dass S/o Banarsi Dass (defendant No.2)”.

9. The learned counsel further contends that the petitioner-Vijay Kumar has not proceeded against any other property, although the same is under attachment.

10. It is well settled that the various provisions of CPC have to be harmoniously construed. It is also well settled that the rules of procedure are required to be interpreted in a manner which advance the cause of justice and help the Courts to do substantive justice between the parties. On careful reading of Rule 10 of Order XXXVIII CPC, it is apparent that the attachment before judgment shall not affect the rights of the persons who are not parties to the suit. Such attachment also does not bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of the decree. Thus, the intention of the legislature with respect to the attachment before judgment is clear from the reading of Rule 10 of Order XXXVIII CPC. In that context, Section 63 is required to be examined. It becomes apparent that the legislature, while making the provision for execution of the decree passed by several courts, lay down a procedure for their execution. In the considered opinion of this Court, slight insignificant infringement of the procedural law does not result in invalidating the court auction. Thus, finding no merit, the revision petition is dismissed.

*R.M.S.
dismissed.*

-

Petition