

Amarjit Kaur v. Gurjant Singh, 2018 PLRonline 1307 (ID #1318103)

PUNJAB AND HARYANA HIGH COURT

Before: Justice Kuldip Singh

Amarjit Kaur v. Gurjant Singh

CR No. 3547 of 2017 (O/M)

7.3.2018

CPC S. 60 (1) (CCC) - Suit for specific performance regarding disputed house - Trial Court came to the conclusion that agreement of sale was only for the purpose of security and there was no intention to sell/purchase the house - Operative part of decree reproduced above goes to show that no charge was created on the house in question - The Executing Court is to execute the decree and not the findings on which decree was passed - Since in decree, no charge was created on the house in question, therefore, protection of amended provisions of Section 60 (1)(CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh is available to JD and her only residential house cannot be sold in execution of decree.

Mr. Pardeep Bajaj, for petitioner. Mr. K.R. Dhawan, for respondent.

KULDIP SINGH J. (ORAL) - Impugned in present revision is order dated 26.4.2017 (Annexure-P-1), passed by the learned Additional Civil Judge (Senior Division)-cum-Sub Divisional Judicial Magistrate, Zira. Vide first order, the objection petition filed by JD, objecting to the attachment of her only residential house was dismissed. Vide second order dated 26.4.2017 (Annexure-P-2), passed by the learned Additional Civil Judge (Senior Division)-cum-Sub Divisional Judicial Magistrate, Zira, the sale warrants were issued.

2. I have heard the learned counsels for both the parties and have also carefully gone through the file.

3. It comes out that in a suit for specific performance regarding disputed house, the trial Court came to the conclusion that agreement of sale was only for the purpose of security and there was no intention to sell/purchase the house. Consequently, alternative relief for recovery of money was granted. Following relief was granted, vide order dated 26.11.2015 (Annexure-P-3) :-

'16. As a result of the above discussion and findings on issues, supra, the suit of the plaintiff is hereby alternative decreed with costs and plaintiff is entitled for recovery of Rs. 4,80,000/- as refund of earnest money alongwith pendent elite and future interest at the rate of 12% per annum from the date of advancement and agreement till the filling of the present suit and till the decision of the present suit and future interest at the rate of 6% per annum from the date of decision of the present suit till the realization of the amount and the plaintiff is not entitled for any specific performance, as such, suit qua specific performance is hereby dismissed. Decree sheet be prepared accordingly. File be consigned to the Judicial Record Room.'

4. In pursuance to the said decree, the execution was filed for recovery of the decretal amount in which the house of JD Amarjit Kaur has been attached. Before the lower Court, JD filed objections under Section 47 read with amended provisions of Section 60 (1) (CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh stating that attached house is her only residential house and cannot be attached being exempted under amended provisions of Section 60 (1) (CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh. The objections were negated by the Executing Court. It is necessary to reproduce the amended provisions of Section 60 (1) (CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh :-

'S. 60(1)(CCC) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him ;

Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recorded.'

The amended provisions of Section 60(1)(CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh clearly shows that only main residential house of JD is exempted from attachment. The only exception is to the house which has been specifically charged in the debt sought to be recovered.

5. Now, this Court is to see whether house attached by the Executing Court was subject to any charge ?

6. On behalf of decreeholder, it has been argued that the house was subject matter of dispute and suit for specific performance of agreement of sale regarding said house was filed. In fact, the trial Court held that agreement of sale of house was only for the purpose of security and, therefore, alternative relief of recovery was allowed. It has been argued that since the house was subject matter of agreement in which decree was passed, therefore, it is covered under the exception to amended provisions Section 60 (1)(CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh and can be attached. Reliance has been placed upon the Single Bench authorities of this Court in Sikandar Singh v. Harjit Pal Singh, (2005-1)139 PLR 591 , Sher Singh v. State Bank of Patiala, Branch Jakhepal and another, (2002-3)132 PLR 730, and Gurdeep Singh v. Balbir Singh and others

(2010-4)160 PLR 518 .

7. The perusal of Single Bench authority of this Court in Sikandar Singh (supra) shows that in the said case, in the Lok Adalat, both the parties agreed that if the decretal amount was not paid in installments, it can be recovered by sale of the house. Therefore, the house was specifically charged which is not the position in present case. Hence, the said authority is not attracted in present case.

8. In the case of Single Bench authority of this Court delivered in Sher Singh (supra), it was an agricultural land and JD had failed to show that there is a house on the land in question occupied by him.

9. Further, in Single Bench authority of this Court delivered in Gurdeep Singh (supra), the Court has taken the view that protection under amended provisions of Section 60 (1) (CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh is available to the JD. In the said case, authorities of this Court in K.L. Bawa v. Basant Textiles, 1982 PLR 258 and Sheela Versus The Punjab and Sind Bank Ltd., 1994 (1) PLR 583, were considered and it was held that widow being not JD has no exemption of Section 60(1) (CCC) CPC, 1908.

10. In present case, it is not so and the house in question belongs to Amarjit Kaur (JD). The operative part of decree reproduced above goes to show that no charge was created on the house in question. The Executing Court is to execute the decree and not the findings on which decree was passed. Since in decree, no charge was created on the house in question, therefore, protection of amended provisions of Section 60 (1)(CCC) CPC, 1908, as applicable to State of Punjab, Haryana and Chandigarh is available to JD and her only residential house cannot be sold in execution of decree. As such, impugned orders dated 26.4.2017 (Annexure-P-1) and dated 26.4.2017 (Annexure-P-2) are hereby set aside.

11. Consequently, revision is allowed.