

Ghurey Vs. Sanwalia

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SooperKanoon Citation : sooperkanoon.com/479205

Court : Allahabad

Decided On : Feb-11-1921

Reported in : 61Ind.Cas.777

Judge : Tudball, J.

Appellant : Ghurey

Respondent : Sanwalia

Judgement :

Tudball, J.

1. This is a very simple matter. A decree was obtained against the appellant for Rs. 400 on the 15th of January 1920. On the 3rd of March 1920 the decree-holder applied in execution for the attachment of two bullocks and certain standing crops. The judgment-debtor objected that, under Section 60(6), his two bullocks were not liable to attachment and sale nor were the crops. The Court below has written a curious judgment. It runs as follows:

The oxen are under mortgage to one Kalab Husain and, therefore, the judgment debtor cannot take any such objection about them. About crops, it appears that the judgment-debtor had sown grain crops and the decree-holder has left this out, no reason to leave off any more grain. Objection disallowed with costs.

2. It appears from an examination of the record that this unfortunate judgment debtor was also in debt to his landlord, and that he had given a cart and the two bullocks as security for his debt, but when it became time to cultivate his land the landlord had to allow him to take back the cattle for that purpose. I fail to see what effect this fact has on the operation of Section 60(5). That section says that, where the judgment-debtor is an agriculturist such cattle and such seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such shall not be liable to attachment and sale. The Court ought to have gone into the question as to whether the cattle now attached were necessary in order to enable the judgment-debtor to earn his livelihood as an agriculturist.

3. As the evidence is brief I have gone into it myself and I find that he holds about 30 bighas of land (kacha) and that he has two bullocks and two buffaloes. It is obvious from the facts that the Zemindar had to return the bullocks to him that they were absolutely necessary for the cultivation of his land. This being so, they ought never to have been attached in execution of the decree. So far as the grain is concerned it appears that only some and not all of the standing crops have been attached so that there is grain in the hands of the judgment-debtor and no further order in respect thereto need be passed. I allow the application to this extent that I direct that the cattle be released from attachment and be restored to the judgment-debtor. The judgment-debtor will have his costs of this application and also of his objection in the Court below from the opposite party.