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Court : Rajasthan

Decided On : Feb-01-1990

Reported in : 1990WLN(UC)19

Judge : Mohini Kapoor, J.

Appeal No. : S.B. Civil Revision Petition No. 571 of 1988

Appellant : Bhagwan Ram

Respondent : Ganesh Ram and ors.

Disposition : Petition allowed

Judgement :

Mohini Kapoor, J.

1. In this revision petition, the point involved is this, whether the house which was attached by decree-holder in execution of the decree could not be attached by virtue of Section 60(1)(c) of the Code of Civil Procedure. This provision reads as under:

Provided that the following particulars shall not be liable to such attachment or sale, namely:(c) house and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to (an agriculturist or a labourer or a domestic servant) and occupied by

him;

The learned Counsel for the petitioner has contended that for claiming exemption from attachment and sale, the judgment debtor has to show that he is an agriculturist and the house or building, which has been attached is occupied by him. It is contended that the learned lower court namely the Civil Judge, Jnunjhunu has accepted that the judgment debtor is an agriculturist and has also accepted that he is living in the house which is the subject matter of the attachment along with his family. He however, did not exempt the property from attachment or sale on the ground that the judgment debtor had not proved that he was using this house for agricultural purposes. Reliance has been placed on a number of decisions.

2. In *Gowrana and Another v. Basvana Gowd* : AIR1975 Kant84 ; it has been held that so long as the houses and other buildings belong to an agriculturist and are occupied by him, the agriculturist is entitled to the exemption Under Section 60(1)(c) and this exemption does not seem to be subject to any other condition. It was further held that it is not correct to say that this provision applies only in cases where it is shown to be necessary for him to occupy the house for the purpose of cultivation of his lands. This Court had occasion to examine the provisions of Section 60(1)(c) of the Code of Civil Procedure in *Suraj Bhan and Ors. v. Krishna Behari and Ors.* ILR 1953 Raj. 359. The original judgment-debtor was not an agriculturist but his legal representatives were agriculturists. It was held that in Order to exempt houses and other buildings from attachment and sale by virtue of Section 60(1)(c) CPC on the ground that they belong to an agriculturist and are occupied by him. The status of the original judgment debtor has to be his own and not of legal representative.

3. The learned Civil Judge has relied upon *Patel Bacchu Bhai v. Bai Lalita and Ors.* : AIR1972 Guj31 . where in relying upon Supreme Court decisions : [1961]2SCR163 and (AIR 1948 Bom 229) it has been observed that if an agriculturist owns a house of residence for away from his agricultural fields, it would not be open to him to claim for such a house exemption from attachment and sale because it could not be said that such a house is occupied by him as an

agriculturist. However, coming to the facts of the case, it was held that the appellant was an agriculturist even though he was a minor who was getting it cultivated through his servants. At the same time, it was also held that he was not residing in the house under attachment and it was not being used for purposes of keeping the agricultural implements, hence he could not claim exemption.

4. In *Shrimant Appasaheb Tuljaram Desai and Ors. v. Balchandra Vithalrao Thube* : [1961]2SCR163 which has been relied upon in the *Gujrat's case* (supra), the main question was whether the person whose Wada had been attached was an agriculturist or not. It was observed that the appellants could not be said to be agriculturist mainly dependent for their maintenance on tilling the soil and they were unable to maintain themselves otherwise. The meaning of 'agriculturist' in sub-clause (c) was said to be the same as used in clause (b). Considering that the appellant in the case was not an agriculturist: the Wada in question which was used for storing the produce and keeping the implements was not held to be exempt from attachment.

5. In the present case, I have gone through the statement of witnesses recorded before the executing court. The petitioner has stated that he is an agriculturist and he is using the house in dispute for his own residence and that he has no other place of residence. This house is a short distance away from his fields. The decree-bolder when he came in the witness-box admitted that the petitioner is residing in the attached house but his only contention is that the house is not used for storing the agricultural implements or for keeping the cattle. He admits that the petitioner has a field which is 2-3 furlongs away from his house. Any other occupation of the petitioner has not been proved. When the petitioner is an agriculturist and is in occupation of the house which is subject matter of the attachment, the same cannot be taken out from him merely because it has not been proved that the house is used for storing agricultural produce, agricultural implements etc. What is necessary in order to claim exemption Under Section 60(I)(c) CPC is that it should be shown that the person is dependent for his livelihood upon agriculture and such a person should not be deprived of the roof under which he is living. These conditions have been satisfied and hence, the property in dispute is not liable to attachment and sale in execution of a decree

against him.

6. In the result, this petition is accepted. The order dated 6th August, 1988 passed by the Civil Judge, Jhunjhnnu is set-aside and the property in dispute is released from attachment. The record of the case be returned to the trial court.

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