

Smt. Vimla Vs. Firm Vinod Kumar Brij Mohan and ors.

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Court : Rajasthan

Decided On : Dec-19-2002

Reported in : AIR2003Raj157

Judge : Rajesh Balia and; D.N. Joshi, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 38, Rule 5

Appeal No. : D.B. Civil Special Appeal No. 72 of 2001

Appellant : Smt. Vimla

Respondent : Firm Vinod Kumar Brij Mohan and ors.

Advocate for Def. : R.K. Singhal, Adv.

Advocate for Pet/Ap. : Sudesh Kumar Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

1. Heard learned counsel for the parties.

2. The respondent No. 1 is a firm and decree-holder and one of its partners respondent No. 2 has been served and represented by his counsel. In these circumstances, we are of the opinion that the notice on respondents No. 3 and 4 need not be awaited and their service is disposed with. The petitioners who are

legal representatives of the objector Vimla Devi against the execution of decree against her husband and her husband's brother who are partners of the firm Ms. Liladhar Rathi and others impleading its partners Kanhaiyalal and two brothers Om Prakash and Mahabir Prasad.

3. The original suit No. 80/2002 was filed for recovery on 26-7-1980 and the decree was passed against the firm on 20-11-1984. In pursuance thereof, the execution was laid by the decree holders against the property in question bringing it to sale.

4. During the execution proceedings Smt. Vimla Devi wife of Kanhaiyalal one of the Judgment-debtors filed objections alleging that the property in question is her property and, therefore, is not liable to be sold in execution of decree against her husband. She has purchased the property by a registered sale deed dated 30-6-1980. The presentation of the registration of the sale was made on 31-7-1980 as her certified photo copy produced by the debtors before the Executing Court.

5. The Executing Court rejected the objection vide its judgment dated 2-6-1992, finding that the sale has been completed only after the judgment-debtors including husband of the petitioner objector came to know about the filing of the suit along with application for temporary injunction and attachment before judgment. The relevant facts are that the suit was filed on 31-6-1980 and time was granted on that very date. The notice of application moved under Order 39, Rule 1 and 2, CPC and another application moved under Order 38, Rule 5 were already issued on the same date. In pursuance of which an appearance was filed on behalf of the brother of Kanhaiyalal on 30-7-1980. Apparently, the notice have not been served on Kanhaiyalal on that date.

6. Be that as it may, is only after filing of the suit along with the application which was in the knowledge of the brother of Kanhaiyalal that the document alleged to have been executed on 30-6-1980 was presented for registration, according to which the objector has purchased the property in question for Rs. 2500/-. The objections have been filed in the year 1992 almost after seven years of lodging of the execution when one of the earlier objections have been rejected.

7. The learned Executing Court also was of the opinion that the objections have been filed belatedly which also indicates that the objections have been filed in order to defeat the decree by obstructing the execution at that stage by the Executing Court, that the property is only a part of the house in which parties reside and the petitioner has purchased the part of property from her husband only for Rs. 2,500/-. The objector along with her husband is staying in that very house.

8. Taken into consideration all these circumstances, the Executing Court dismissed the objection petition. The first appeal against that order dated 2-6-1992, has since been dismissed by judgment under appeal dated 2-5-2001 by considering all the aforesaid aspects and apparently no plausible ground for a wife to purchase the house in which she is living with her husband and to file the present application from the date of return of notice of the suit filed against her husband leads to an irresistible conclusion that transaction is not genuine but was to defeat the decree that may be passed against her husband in respect of the debts incurred by him.

9. In the facts narrated above, we are in agreement with the conclusion reached by learned single Judge and therefore find no merit in this appeal. The circumstances speak for themselves that the transaction was not a bona fide transaction but was to defeat the decree that may be passed against her husband for discharging the debts by him.

10. No inference is called for. Accordingly, the appeal is dismissed with costs.

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