

PUNJAB AND HARYANA HIGH COURT

The Punjab Mercantile Bank Ltd

Vs

General Typewriter Co

(Tek Chand, J.)

26.04.1962

ORDER

Tek Chand, J.

1. On 23rd November, 1956, payment order was passed in favour of the Punjab Mercantile Bank Limited (in liquidation) and the judgment-debtors were ordered to pay a sum of Rs. 2578.44 nP. Execution was taken out and the house of the judgment-debtors situated at Jullundur City was attached. Objections were made to the attachment on the ground that the execution application filed by the decree-holder was barred by time and that the house which had been attached could not be sold in view of Section 60(ccc) of the Code of Civil Procedure as it being a residential house was exempt from attachment and sale. It was stated that the judgment-debtors had no other house for the purposes of their residence. The following issues were framed:--

1. Is the attached house not liable to sale in view of Section 60(1), Civil Procedure Code?

2. Is the execution application barred by lime?

2. Patties have led evidence. The arguments have been confined in this Court to the first issue. The second issue as to limitation has not been pressed. Shri Dharam Pal Sehgal, judgment-debtor appeared as his witness and deposed that he and his father were judgment-debtors. They and the other members of the family live in the house having no other house anywhere else. The site under the house was purchased about 26 years ago and it was stated that the sale-deed was in his possession though none had been produced. After the purchase of the site the house had been built. In cross-examination this witness disclosed that it was a double storeyed house having four rooms on the ground-floor and five rooms on the first-floor. He then stated--
"Two of the chobaras on the first floor are let out to two tenants."

3. Shri Faqir Chand Sehgal the father of this witness had applied for loan to the Bank on 21st June 1934 vide J. D. W1/1. Under the heading "Nature Extent and Particulars of Security Offered" it was stated—

"Sale-deed of a plot of land on which the house has been got built by me. This property has been acquired by me. The present value of this house is about Rs. 25,0007-".
After the loan was sanctioned two deeds of mortgages Exhibits J. D. 1/2 and J.D.1/3 were handed

over to the Bank ostensibly as by way of equitable mortgages. Both these mortgages relate to the house under attachment. These mortgages had been redeemed and the two documents were made over to the Bank. No sale-deed of the property was offered to the Bank by way of security, the property which is exempted under Section 60(1)(ccc) is, "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 mm; provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."

4. The argument advanced on behalf of the judgment-debtors is that their case is not covered by the proviso because the house has not been specifically charged with the debt sought to be recovered. My attention has been drawn to Section 58(f) of the Transfer of Property Act which allows mortgage by deposit of title-deeds where a mortgagor 'delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon'. No mortgage has been created by deposit of title-deeds in this case because two deeds of mortgages executed by Faqir Chand judgment-debtors were not documents of title. A mortgage had been created by Faqir Chand himself as is evidenced by the two deeds of mortgage and after the redemption of the mortgage the deeds were handed over to the Bank. It is argued that these deeds are not documents of title in so far as they did not create title though they possibly be evidence of the title of the judgment-debtors. Reliance has been placed by the learned counsel for the judgment-debtors on *N. V. Nageshwara v. Srinivasa*, AIR 1926 Mad 743, *Punjab and Sind Bank Ltd. v. Ganesh Das Nathu Ram*¹, *R* and *Jowala Das Govind Ram v. Thakar Das*², In the Madras case it was held that the mortgage deed executed by the owner of a property in favour of a third person can never be deemed to be a title-deed of the mortgagor. It may be however evidence of the fact that the mortgagor dealt with the property as his. Similar view was taken by the Lahore High Court. I cannot persuade myself to hold that the mortgage deed in favour of a third person is evidence of title. The title is not created by this document. It is merely a word that the mortgagor is the owner. I am therefore satisfied that the decree-holder Bank cannot take advantage of the proviso and cannot bring this property to sale on the ground that it has been specifically charged with the debt sought to be recovered.

5. The next question is whether in view of the statement of Shri Dharam Pal Sehgal, judgment-debtor, the entire house is not liable to attachment and sale, in order to earn exemption not only the building must be main residential house belonging to judgment-debtor but it, must also be occupied by him. On his own statement "two chobaras on the first-floor are let out to two tenants." That being so the portion of the building which is let out to two tenants is not exempt from attachment and sale. I will, therefore, accept the objection of the judgment-debtor to this extent only that the house with the exception of the two chobaras on the first-floor which are let out to two tenants is exempt from attachment and sale. The portion which is in the occupation of the two tenants is liable to be sold in execution of the decree. The decree-holder may now file application under Order 21, Rule 66, Civil Procedure Code, with regard to the portion of the house which is liable to attachment and sale as indicated in this order above. Case to come up on 25th May, 1962.

Cases Referred.

1 AIR 1935 Lah 721
2AIR 1936 Lah 251