

**IN THE HIGH COURT OF PUNJAB AND HARYAN AT
CHANDIGARH**

**CR No. 6852 of 2013
Date of Decision : 4.8.2015**

Rajender Kumar Goel

.....Petitioner

Versus

Ms. Jyoti and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present:- Mr. Sudhir Mittal, Advocate, for the petitioner

Mr. Munish Kumar Garg, Advocate, for respondent No. 1

Mr. Raj Kumar Makkad, DAG, Haryana

M.M.S. Bedi, J.

The petitioner has objected to the execution of an order of grant of maintenance to the decree holder/respondent No.1, by sale of a house, claiming that no order regarding payment of money can be executed by direct sale of property as per order 21 Rule 58 CPC. He has also argued that the revenue authorities cannot be permitted to effect recovery without attachment of the property, as has been done in this case.

Learned counsel for the petitioner has vehemently urged that unless the property is attached as per order 21 Rule 58 CPC, no sale can be conducted under Order 21 Rule 82 CPC.

I have heard learned counsel for the petitioner and carefully considered the legal objection raised by him in context to the provisions of Section 51(b) CPC which gives powers to an Executing Court to enforce a

decree. As per Section 51 (b) the Court may on the application of the decree holder, order execution of the decree by attachment and sale or by the sale without attachment of any property.

In the present case, the sale of the property has been ordered without attachment of the same. So far as the ownership of property is concerned, the Family Court has considered in detail the vesting of the property, which is subject matter of the sale, in the judgment-debtor/Manish Goel/husband of respondent No.1.

I have also considered the contention of learned counsel for the petitioner that a revenue officer cannot execute the decree.

Learned counsel for the petitioner has not been able to satisfy this Court regarding any legal prohibition for execution of a decree with the assistance of the Collector. A decree for recovery of money can be executed as a decree for recovery of arrears of land revenue for which, a procedure has been prescribed under the Punjab Land Revenue Act.

Learned counsel for the petitioner has placed reliance on **“Kancherla Lakshminarayana v. Mattaparthi Shyamala and others, AIR 2008 SC 2069”** in support of his contention that even if a property is sold in auction, the objections to the attachment can be raised by a third party.

I have considered the said judgment which deals with the scope of Order 21 Rule 58 CPC pertaining to the adjudication of claims or objections to attachment of property. The said provision even prescribes filing of an appeal against attachment order under Order 21 Rule 58 (4) CPC. Since the property in the present case belongs to the judgment debtor

as has been held by the Family Court and the recovery is being effected by sale of the property without attachment as per provisions of Section 51(b), the ratio of the judgment mentioned above, does not apply to the facts of the present case, the judgment being distinguishable on facts.

Finding no illegality in the order passed by the Executing Court, this revision petition is dismissed.

Nothing said in this order will prejudice the rights of the judgment debtor to pay the amount of maintenance in instalments.

(M.M.S. BEDI)
JUDGE

4.8.2015
Ashwani