

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

**EFA No.5 of 2013 (O&M)
Date of Decision: 14.10.2015**

Rajesh

...Appellant

Vs

Smt. Indrawati and others

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R.S. Panghal, Advocate
for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. This first appeal has been filed by son of judgment debtor against the order dated 03.10.2013 passed by District Judge (Family Court) Bhiwani, whereby objections filed by the appellant were dismissed and land was attached.

[2]. Appellant-Objector claimed himself to be absolute owner of land comprised in *Khewat* No.20//18, *Khatoni* No.29, *Khewat* No.324//302, *Khatoni* No.458 and *Khewat* No.1694, showing judgment debtor-Satbir as co-sharer as per jamabandi for the year 2003-2004 situated in the revenue estate of village Bidhwan, Tehsil Siwani, District Bhiwani. Objector claimed that property stood transferred in his name and the judgment-debtor has no concern whatsoever with the property in question. The property was

transferred in the name of objector by way of family settlement passed in civil suit No.79 of 2007 decided on 23.02.2008 in case titled as "Rajesh Kumar v. Satbir Singh.

[3]. Decree-holder/respondent is divorced wife of judgment-debtor and has no concern with the land in question. Decree-holder filed petition under Section 13 of Hindu Marriage Act against Satbir/judgment-debtor which was decreed vide judgment and decree dated 01.12.1981. Permanent alimony of Rs.100/- per month was allowed from the date of order which was enhanced to Rs.1200/- per month vide order dated 28.04.2009 on her application for amendment of order dtd 01.12.1981.

[4]. Since the judgment-debtor failed to pay the arrears of permanent alimony, decree-holder filed execution for recovery of the amount wherein recovery warrants were issued. In execution of recovery warrants, property of judgment-debtor was attached and the objections were filed by the objector son of judgment-debtor. The objections of the appellant are that the land has been transferred in his name by means of family settlement in a civil suit No.79 of 2007, therefore, while *rapat roznamcha* this fact was brought to the notice of the revenue officials who made *Rapat* No.89 that the property is exclusively owned and possessed by the objector. The decree-holder has wrongly produced details of property. Since the decree-holder is the divorced wife of judgment-debtor, therefore, she has no concern with the property so attached. The objector was born from

the second wife of the judgment-debtor after a lawful divorce was granted.

[5]. Apparently judgment-debtor was in arrears. Enhancement was duly made in favour of decree-holder vide order dated 28.04.2009. A charge has been created over the property of the judgment-debtor because of his liability to pay arrears of permanent alimony during pendency of application under Section 25(2) of Hindu Marriage Act. Judgment-debtor has transferred the land in favour of objector by suffering a collusive decree in order to avoid his liability to pay enhanced permanent alimony.

[6]. Since the transfer has taken place during pendency of the execution petition, the same is hit by doctrine of *lis pendens*. The property has been rightly attached. The transferee *lis pendens* is also bound by the decree as if he was party to the suit. Even the *lis pendens* continues during appeal or execution. It is a settled principle of law that the vendee *lis pendens* will be bound by the decree and the doctrine continues to apply even during appeal or execution. The charge has been created over the property intentionally so as to deprive the decree-holder from the fruits of enhanced permanent alimony.

[7]. Apparently decree-holder was granted permanent alimony @ Rs.100/- per month vide judgment and decree dated 01.12.1981. The said permanent alimony was lawfully enhanced under Section 25(2) of Hindu Marriage Act on the application dated 28.07.2006

filed by the decree-holder for enhancement of permanent alimony w.e.f. 01.08.2006. The objector filed collusive suit against the decree-holder on 26.05.2007 wherein judgment-debtor admitted the claim of the objector on account of same family settlement and the objector became owner in possession of the land. The application and execution was filed on 28.08.2006 which remained pending till 28.04.2009. Judgment-debtor transferred the land in favour of objector on 23.02.2008 during pendency of execution petition filed by the decree-holder. Objector has admitted in his cross-examination that the disputed land is ancestral land which he inherited from his father in the year 2008.

[8]. Factum of marriage between decree-holder and judgment-debtor is an admitted fact and a decree of divorce was passed between judgment-debtor and the decree-holder in the year 1981 wherein permanent alimony was also fixed.

[9]. From the evidence on record it has been transpired that the collusive decree in favour of objector was suffered during pendency of execution. Transfer of property during pendency of suit/execution is hit by doctrine of *lis pendens* and the same will be treated to be an effort to defeat the right of the decree-holder. Such a decree does not affect the right of the decree-holder as held in **1996(2) RCR 376, Jati Ram Saini vs. Prithi @ Sansi and others.**

[10]. The District Judge (Family Court) rightly dismissed the objection filed by the objector in execution of decree.

[11]. During pendency of the present appeal, applicant-appellant has moved an application to bring on record Mukesh S/o Sh. Hawa Singh as respondent No.3, who is the subsequent purchaser of land in sale of immovable property. He was ordered to be impleaded as respondent No.3 vide order dated 31.07.2014 passed in CM No.10322-CI of 2014. Confirmation of sale was ordered to be stayed by this Court in CM No.10323-CI of 2004 vide order dated 09.12.2014.

[12]. Respondents No.1 and 2 were served through their brother and added respondent No.3 was served by means of affixation. However none appeared on behalf of the respondents and they were proceeded against *ex parte* vide order dated 04.05.2015.

[13]. The appellant has also placed on record order dated 28.02.2014 passed by District Judge (Family Court) Bhiwani as Annexure A-1 filed in CM No.7577-CI of 2014 showing that after purchase of land by Mukesh an amount of Rs.78,325/- has been paid to the decree-holder. The said amount has been adjusted from the auction amount which was fixed as Rs.80,000/-.

[14]. Amount of Rs.78,325/- has been paid to the decree-holder by the aforesaid Mukesh. Decree-holder made a statement before the executing Court that she does not want to proceed with the execution. In view of the statement of the decree-holder the execution was dismissed as withdrawn being fully satisfied.

[15]. In view of aforesaid facts, nothing survives in this appeal.

Even on merits the objections of the appellant were not legally sustainable having vendee *lis pendens* and were hit by doctrine of *lis pendens*. Secondly the execution stands satisfied in view of statement made by the decree-holder.

[16]. No interference is called for in this Execution First Appeal and the same is accordingly dismissed.

October 14, 2015

Atik

(RAJ MOHAN SINGH)
JUDGE.