

227.

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

**Civil Revision No.7006 of 2014**

Date of decision:19.01.2016

Kuldeep Singh

.... Petitioner

versus

Partap Singh and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE K. KANNAN**

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Present: Mr. Vaibhav Sehgal, Advocate,  
for the petitioner.

Mr. Bikramjit Arora, Advocate,  
for the respondents.

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

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**K.Kannan, J. (Oral)**

1. At the stage of execution of a decree for money, a purchaser from the judgment debtor who incidentally happened to be the brother, caused an objection to be given for attachment, claiming the property belonged to him. The sale was after the institution of suit but the contention was since the suit was only for money, adjudication regarding property was not involved and, therefore, the property dealt with by the judgment debtor during the pendency of suit could not have been proceeded against. The

objection was accepted and the court released the property from attachment. It is against this order that the revision has been filed.

2. A third party objector making a claim to the property does so through an application under Order 21 Rule 58 CPC. The said provision makes possible for raising of attachment if the claim by a third party is substantiated. An order passed in such an application shall be in the nature of a decree under Order 21 Rule 58 (4) CPC and hence, appealable. I must observe no such application has been filed under Order 21 Rule 58 CPC.

3. The third party objection is also competent as an obstruction caused for delivery and an adjudication sought in the manner contemplated under Order 21 Rules 97 to 99 CPC. Such a proceeding will be in the nature of a civil proceeding under Order 21 Rule 101 CPC and the order will take effect as if it were a decree under Rule 103 and consequently, a provision for an appeal would be possible. Here again, it had not come to the stage of delivery and an adjudication could not be seen to be an adjudication under Order 21 Rule 101 CPC.

4. An objection by a third party, if it is not done under Order 21 Rule 58 CPC or under Order 21 Rule 97 to 99 CPC must be seen merely as an order in execution and there is no provision for an appeal against the Executing Court's order. An order between parties to suit by the Executing Court will be an order under Section

47 which is revisable but in this case the third party cannot be equated to the position of a judgment debtor and an adjudication cannot be taken as under Section 47.

5. Assuming that an objection filed by a third party for raising an attachment is construed as an application under Order 21 Rule 58 CPC to provide for the operation of the order to be treated as a decree and the remedy available to a party aggrieved shall be pro prefer an appeal to the appellate court. If in this case there has been an adjudication on merits with reference to the contentions raised to an action for an appeal instead of revision. In this case, however, there is no such adjudication on merits and the court has misdirected itself to adopting some principles which are wrongly laid down. A suit for money when the decree holder seeks for attachment of some properties which admittedly the judgment debtor owned cannot be tested merely in the light of the principle of *lis pendens*. The case has to be considered when a purchaser from a judgment debtor claims right to the property as a bona fide purchaser when there was no pending claim against the property. Transaction of sale as merely sham and that the property that must be treated still as a property of the judgment debtor will be seen through some of the provisions of the Transfer of Property Act which allow for challenges to be made in collateral proceedings.

6. Section 39 of the Transfer of Property Act allows for a transfer to be interdicted by a person who has a right to claim maintenance. Similarly Section 53 of the Transfer of Property Act makes possible for every transfer of immovable property made with an intent to defeat or delay the creditors to be avoided in proceeding at the instance of the creditor so defeated or delayed. This challenge by a creditor can be by means of an action for insolvency taking the transfer to be constituted an act of insolvency or could be brought at the stage of attachment for sale of the property contenting that the law to the judgment debtor is invalid and it is intended to defeat and delay the proceedings. The reference to the provision of Section 53 as competent in an execution stage has been dealt with by the Supreme Court in the decision in **C. Abdul Shukoor Saheb Versus Arji Papa Rao and others-AIR 1963 1150**. The Supreme Court has directed that the Executing Court will itself direct an enquiry and judge whether the creditor could establish that the transfer has made only to defeat and delay the creditor and that it is voidable at his instance. The burden would be on the creditor challenging the sale and the court will decide on whether it can allow for execution to be continued with reference to some property after passing an order of whether the transaction is fraudulent or bona fide in the manner that the respective parties contends for.

7. In **Southern Steelmet and Alloys Limited Versus B.M. Steel-AIR 1978 Madras 270**, the Bench of Madras High Court held that the adjudication referred to under Order 21, Rule 58 Civil Procedure Code (as amended in 1976) is not summary. It is the intention of legislature under the amended C.P. Code that it should be a decision as if rendered in a regular suit resulting in an appealable decree. The fuller examination of the rights of parties has to be held after giving them adequate opportunity to place all relevant materials before the court so that the court could ultimately decide and adjudicate on all questions including question relating to title or interest in the property attached. This adjudication will be taken by framing an appropriate issue as under:-

Whether the sale by the judgment debtor in favour of his brother-5<sup>th</sup> defendant fraudulent and made with an intent to defeat and delay the creditor?

The onus shall be light, as held by the Supreme Court in **C. Abdul Shukoor Saheb** (supra), such as when the transferee is a near relative, when the judgment debtor or the purchaser must prove the genuineness of the transaction and the bona fides of purchase once the initial burden is discharged by the creditor by setting out the circumstances of relationship between the transferor and the transferee and the prospect of the purchaser to know the indebtedness of the transferor.

8. The order already passed is set aside and the revision petition is allowed and remitted to the Executing Court for consideration of the respective claims in the light of observations made above.

**(K.KANNAN)**  
**JUDGE**

19.01.2016  
sanjeev