

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 712 of 2016**

1. Smt. Dhanavati Yadav W/o Late Musafir Yadav, Aged About 44 Years R/o Behind B.R.P., Near Maitri Niketan, Risalibhatha, Bhilai, Tahsil & District Durg, (Chhattisgarh)
2. Manish Yadav, S/o Late Musafir Yadav, Aged About 17 Years Minor, Represented Through Mother And Legal Guardian Petitioner No.1, R/o Behind B.R.P. Near Maitri Niketan, Rsialibhatha, Bhilai, Tahsil & District Durg, (Chhattisgarh)
3. Abhishek Yadav, S/o Late Musafir Yadav, Aged About 15 Years Minor, Represented Through Mother And Legal Guardian Petitioner No.1, R/o Behind B.R.P. Near Maitri Niketan, Rsialibhatha, Bhilai, Tahsil & District Durg, (Chhattisgarh)
4. Kumari Chanchal Yadav, D/o Late Musafir Yadav, Aged About 12 Years Minor, Represented Through Mother And Legal Guardian Petitioner No.1, R/o Behind B.R.P. Near Maitri Niketan, Rsialibhatha, Bhilai, Tahsil & District Durg, (Chhattisgarh)

---- Petitioners

Versus

Ramchhabila Gupta S/o Shri Mahajan Gupta, Occupation Milk Seller, R/o Behind Mosque, Risalibhatha, Bhilai, Tahsil & District Durg, (Chhattisgarh)

---- Respondent

For Petitioners	:	Shri Akhilesh Mishra, Advocate
For Respondent	:	Shri Goutam Khetrapal, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava**Oral Order****17/01/2017**

Heard.

1. This petition under Article 227 of the Constitution of India has been preferred by the judgment debtors, aggrieved by order dated 05.11.2016 by which the Executing Court has directed attachment and sale of a motorcycle and cattle for satisfaction of a decree passed on 20.04.2006 in favour of plaintiff Ramchhabila against defendants Musafir Yadav, husband of present judgment debtor Smt. Dhanavati Yadav and

father of other judgment debtors.

2. Learned counsel for the petitioner argued that the impugned order directing attachment and sale of motorcycle and domestic animals in satisfaction of decree passed against Musafir Yadav is illegal because the decree holder has failed to prove that these movable properties were inherited by Dhanavati Yadav and sons and daughter from judgment debtor Musafir Yadav. It is submitted that despite categorical evidence of Harihar Yadav, brother of Dhanavati Yadav, it has been held that domestic animal belong to late Musafir Yadav. It is also argued that in any case, cattle could not be attached as they are exempted from attachment in execution of a decree under proviso Clause (b) of Section 60 of the Code of Civil Procedure, 1908.

3. On the other hand, learned counsel for the respondent supported the order passed by the Executing Court by submitting that the protection against attachment of cattle would be available only where it is proved to the satisfaction of the Court that the judgment debtor is an agriculturist. Even according to the judgment debtors, they are not involved in any agricultural activity but earning their livelihood by selling milk and other activity. It is next submitted that the Executing Court after scrutiny of oral evidence, has recorded finding that the motorcycle and cattle belong to late Musafir Yadav which were inherited by his wife, sons and daughter, after his death. Therefore, the same could be attached and sold in execution of decree.

4. As far as issue with regard to attachment and sale of cattle is concerned, Clause (b) of proviso to Section 60 of CPC clearly provides as below :

“(b) tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of next following section;”

Therefore in order to seek protection against attachment of cattle, it has to be established that the judgment-debtor is an agriculturist. The protection against attachment of cattle in such cases is intended to protect an agriculturist so that he is able to earn his livelihood by using

all implements of agricultural operation which includes implements of husbandry, cattle, seed-grain etc.

5. From the material on record, it is clear that even according to judgment-debtor, they are not involved in agricultural activity but according to evidence of their witnesses Harihar Yadav, they are earning their livelihood by selling milk.

6. The evidence of Harihar Yadav has to be read in totality. While in the examination-in-chief, Harihar says that he had given 6 to 7 buffaloes to his sisters for her care and earning therefrom. However, in his cross-examination, he admits that he had given 5 to 6 buffaloes to late Musafir Yadav from which Musafir Yadav used to earn livelihood for himself and his family. He again says that he had given cows and buffaloes which were maintained by him by selling milk, he used to maintain family of Musafir Yadav. Further, in his cross-examination, he says that he had given cows and buffaloes to his sister Smt. Dhanavati Yadav and brother-in-law Musafir Yadav.

7. A complete reading of evidence of this witness shows that he had given the cows and buffaloes to both his sister and brother-in-law so that they may earn their livelihood by selling milk. On such reading of the evidence, it has to be held that both Musafir Yadav and his wife Dhanavati Yadav were joint owner of the cows and buffaloes. In the absence of there being any specific evidence of their share of ownership, it can be safely presumed that they were owners in equal share. That means half of the cows and buffaloes were owned by Smt. Dhanavati and remaining half by her husband Musafir Yadav.

8. As far as motorcycle is concerned, it is quite clear from the evidence of the judgment-debtor that the motorcycle belong to late Musafir Yadav only and it was inherited by his wife and children after his death.

9. In view of the above, this petition is allowed in part. The impugned order to the extent it directs attachment and sale of motorcycle, warrants no interference. In so far as attachment and sale of cows and buffaloes is concerned, the impugned order does not clearly state the number of

cows and buffaloes but it has been recorded as 5 to 6 cows and buffaloes. Her brother Harihar Yadav has stated that he had given 6 to 7 cows and buffaloes. Therefore, in these circumstances, it is directed that 3 cows and buffaloes in possession of judgment-debtor alone shall be liable for attachment whereas remaining 3 cows and buffaloes shall not be attached or sold in execution of decree.

10. The petition is accordingly disposed off.

Sd/-

(Manindra Mohan Shrivastava)
Judge