

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 5-7-2019

Judgment delivered on 24-7-2019

FA No. 4 of 2008

- Panchuram s/o. Halal Nirmalkar aged about 45 years, Agriculturist, r/o villabge Katangi, Patwari Circle No.6, Tahsil Chhuikhadan, District Rajnandgaon,CG.

----Appellant.

Versus

1. Smt. Rajkumari Kurre w/o. Govind Das Kurre, aged about 40 years, r/o. Village Gandai (Pandariya), Tahsil Chhuikhadan, District Rajnandgaon (CG). (plaintiff/deeree holder).
2. Shidayal Yadav S/o Janauram Yadav aged about 35 years, R/o Village Katangi R.I. Circle Gandai Tahsil Chhikhadan District Rajnandgaon CG (Defendant No.1/judgement Debtor)
3. Devlal Yadav S/o Janauram Yadav aged abojut 24 years, R/o Village Katangi R.I. Circle Gandai Tahsil Chhuikhadan District Rajnandgaon CG (Defendant No.2).
4. State Of Chhattigarh Through The Collector Rajnandgaon CG. (Defendant No.3).
5. Shriram S/o Kartikram Nirmalkar R/o Villge Katangi Patwari Circle No.6 Tahsil Chhuikhadan District Rajnandgaon CG (Purchase Of Land Through Execution/applicant

---- Respondents

For appellant : Mr. Rakesh Pandey, Advocate.

For respondent No.4/ : Mr. Aman Kesharwani, Panel Lawyer
State

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. This appeal is preferred under Section 96 of the Code of Civil Procedure, 1908 against the judgment/deeree dated 27-11-

2007 passed by the Additional District Judge, Khairagarh (CG) in execution proceeding of Civil Suit No. 15-A/2003 wherein the objection filed by the appellant that land bearing Survey No. 254/4 admeasuring 0.20 acres of land situated at village Katangi shall not be auctioned in execution proceeding is rejected.

2. Respondent No.1/plaintiff filed a civil suit bearing No. 15-A/2003 for specific performance of contract against respondents No. 2 and 3 in which decree is passed in favour of respondent No.1 for return of earnest money. Execution proceeding for recovery of Rs.91,298/- was filed before the executing court as mentioned above and in that proceeding land of respondent No.2 Shiv Dayal was auctioned including the land which was sold by Shiv Dayal to appellant Panchuram which was purchased by him on 3-10-2006. The appellant objected to that auction, but the trial court rejected the same on the ground that respondent No.2 sold the land after initiation of execution proceeding malafidely and sale certificate of the land is issued in favour of auction purchaser namely ShriRam s/o. Kartikram. Nirmalkar validly, therefore, objection of the appellant is not sustainable.

3. Learned counsel for the appellant would submit that the property in question is not attached as per provisions of Order

21 Rule 54 of the Code of Civil Procedure, 1908 and the appellant is in possession of the land as mentioned above since 3-5-2006, therefore, the said land cannot be auctioned. The appellant is bona fide purchaser and his right should be protected.

4. I have heard learned counsel for the appellant and perused the record of court below including the judgment and decree.

5. The question for consideration of this court is whether auction of land in question is proper. It is undisputed that the decree was passed against respondent No.2 and in favour of respondent No.1. Originally the decretal amount was Rs.91,298/-. The property is auctioned for Rs.95,500/- and from the order sheets of the Executing Court dated 9-7-2007 it appears that decretal amount of Rs.5,850/- remained balance to be recovered after auction. Sale certificate was issued in favour of auction purchaser on 4-8-2007 and as per report of process server possession of land is delivered to auction purchaser on 4-12-2007 and execution proceeding was terminated after full satisfaction of the decree vide order sheet dated 17-12-2007. Decree was passed in favour of respondent No.1 on 1-12-2004. Execution proceeding was started against respondent No.2 on 22-6-2005. Respondent No.2 was aware

of the fact that decree passed by the court is executable against him even then he sold the land in question on 3-5-2006 in favour of Panchuram after initiation of execution proceeding. This act cannot be said to be bona fide. Once there is obligation the same should be discharged before transferring or charging the property in any way but that is not done in the present case, therefore, executing court is right in holding that transfer in the present case is not bona fide. Where execution proceeding is initiated, sale of property by judgment debtor was to defeat the original claim of the decree holder would be hit by doctrine of lis pendens. When there is evidence of attachment in the present case, it must be presumed that all formalities were duly complied with, therefore, argument advanced on behalf of the appellant is not sustainable that the attachment proceeding and auction proceeding is not performed regularly. The only right opened to the appellant is to recover the amount from respondent No.2 who has sold the land during execution proceeding, now auction purchaser is in possession of land and sale certificate was also issued in his favour validly, therefore, it is not a case where interference of this court is required with the order of Executing Court.

6. The trial Court discussed the entire oral and documentary evidence and finding of the trial Court is based on

relevant material placed on record and same is not based on irrelevant or extraneous material. After re-assessing the evidence, this court has no reason to substitute contrary finding. The appeal is liable to be dismissed.

7. Accordingly, the decree is passed against the appellant and in favour of the respondents as under:

- i) The appeal is dismissed with cost.
- ii) Parties to bear their own costs.
- iii) Pleader's fee, if certified, as per schedule or whichever is less.
- iv) A decree be drawn up accordingly.

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju