

ESA No.48 of 2019 (O&M)

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

ESA No.48 of 2019 (O&M)
Date of decision: 02.09.2019

Rakesh Kumar

.....Appellant

versus

Prem Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Kamaldeep Kaur, Advocate,
Legal-aid counsel for the appellant.

RAMENDRA JAIN, J. (ORAL)

Through this appeal, judgment-debtor has laid challenge to judgment dated 24.05.2019 of the appellate Court, affirming order of the executing Court dated 02.11.2015, whereby his objections were dismissed.

Briefly, respondent No.1 – Prem Kumar filed a suit against the appellant for recovery of ₹9,000/- as mesne profits for unauthorised use and occupation of his property, which after holding trial was decreed vide judgment and decree dated 26.05.2011. Pursuant thereto, respondent No.1 filed execution petition under Order 21 Rule 15 CPC for recovery of ₹12581.75 from appellant. During its pendency, appeal filed by the appellant challenging the aforesaid judgment and decree, was dismissed vide judgment and decree dated 06.02.2012. His revision bearing Civil Revision No.2629 of 2012 also met the same fate vide order dated 23.10.2013 with imposition of costs of ₹3,000/- upon him. Therefore, respondent No.1 moved application on 03.05.2014 to add ₹3,000/- in his execution and for recovery of a total sum of ₹15581.75. Since appellant did

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not pay even a single penny, therefore, his property was ordered to be attached vide order dated 03.05.2014. Appellant filed objections to the attachment of his property, relying upon panchayati compromise dated 04.07.2014. After hearing both the sides, objections were dismissed vide order dated 02.11.2015.

Being aggrieved, appellant approached the First Appellate Court, but remained unsuccessful as his appeal was also dismissed vide judgment dated 24.05.2019.

Learned counsel for the appellant *inter alia* contends that both the Courts below have failed to appreciate that sole house of the appellant could not have been attached in a decree in favour of respondent No.1 in violation to provisions of 60 of the Code of Civil Procedure. On 16.01.2018, appellant moved an application to lead additional evidence to prove his ownership over the attached property and that the same was his residential house by producing water, sewerage bills, house tax receipts, electricity consumption bills, voter ID cards etc. He also moved application for appointment of local commissioner, but the executing Court did not illegally consider the same, observing that attached property was a vacant plot.

Having given thoughtful consideration to the submissions made by learned counsel for the appellant, this Court finds the instant appeal completely devoid of any merit for the reasons to follow.

Own site plan produced by the appellant before the executing Court shows that 1/3rd portion of the attached property measuring 17 marlas was in the shape of plot. Only vacant portion was attached by the revenue

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could not prove any document to show that entire attached property was a residential house and no portion of it was in the shape of plot.

I have gone through impugned judgment and order of both the Courts below and find no illegality or perversity in the same being based on appreciation of evidence.

Dismissed.

(Ramendra Jain)
Judge

September 02, 2019

R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No