

2024:PHHC:039438

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

EFA-2-2024 (O&M)
Date of decision: 19.03.2024

Neelam Saini

....Appellant

Versus

Kavita and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Rajeev Dev Sharma, Advocate for the appellant

ANIL KSHETARPAL, J (Oral)

1. This Execution First Appeal has been filed by the judgment debtor's brother's wife. She claims exemption from the attachment of the property on the ground that it was transferred by the judgment debtor in her favour on 14.12.2009.

2. The existence of an award passed by the Motor Accident Claims Tribunal against the judgment debtor is not in dispute. In a motor vehicular accident, Sh.Rajinder Kumar lost his precious life on 27.11.2009. The claimants filed a claim petition under Section 166 of the Motor Vehicles Act, 1988, which was allowed on 16.01.2012. The claimants are still struggling to receive the amount. The Executing Court has attached the property. The petitioner claims that she is a bonafide purchaser. The Executing Court has come to a conclusion that the transfer by the judgment debtor in favour of the petitioner is not bonafide.

3. Heard the learned counsel representing the appellant at length and with his able assistance perused the paperbook.

4. Learned counsel representing the appellant contends that the transfer of the property in favour of the appellant is before the filing of the claim petition and the attached property was not a part of the suit.

5. This Court has considered the submissions made by the learned counsel representing the appellant.

6. Admittedly, the transfer of the property in favour of the appellant is after the death of Sh. Rajinder Kumar on account of rash and negligent driving by the judgment debtor. Sh. Rajinder Kumar died in a motor vehicular accident, which took place on 27.11.2009. Section 53 of the Transfer of Property Act, 1882 provides that every transfer of immovable property made with intent to defeat or delay the rights of creditors to recover the amount shall be voidable at the option of any creditor so defeated or delayed. Though the claimants are not strictly creditors, however, the aforesaid principle can be invoked in the present case, particularly when the appellant is judgment debtor's brother's wife.

7. Keeping in view the aforesaid facts, no ground to interfere is made out.

8. Hence, dismissed.

9. All the pending miscellaneous applications, if any, are also disposed of.

19.03.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE