IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203) **RSA-667-1998(O&M)**
Reserved on:17.09.2025
Pronounced on:- 23.09.2025

PUNJAB STATE THROUGH THE COLLECTOR, HOSHIARPUR AND OTHERS

… Appellants

Versus

KIMTI LAL JAIN

... Respondent

-.-

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Mr. I.S. Kingra, Sr. DAG, Punjab,
for appellants No.1 to 3.

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VIRINDER AGGARWAL, J.

1. The present appeal has been filed by State of Punjab by assailing the judgment and decree passed by learned First Appellate Court, whereby, the judgment and decree of the learned Civil Judge, Hoshiarpur, has been set aside.

2. Briefly, respondent/plaintiff filed a suit for permanent injunction restraining defendants from auctioning the property owned by him as he has purchased the suit property from Khushi Ram vide registered Sale Deed dated 20.05.1982 for a consideration of Rs.20,000/-. After the purchase of the property, the property of Khushi Ram was attached on 01.06.1982 by the defendant/State, as Khushi Ram was defaulter of Sales Tax Department and the defendants are out to auction the suit property as notice to auction was served through proclamation on 16.09.1992.

3. Defendants contested the suit on the grounds that sale is hit by provisions of Section 53 of Transfer of Property Act as sale deed was

executed in favour of plaintiff in order to defeat the creditors and State has right to auction the property in view of the provisions of Section 72 of Punjab Land Revenue Act, 1887 as previous owner Khushi Ram was a defaulter of Sales Tax Department and the amount of sale tax is being recovered by sale of property.

4. From the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled for relief of permanent injunction as prayed for? OPP

(1A) Whether the suit is bad for non-joinder of necessary parties? OPD

(1B) Whether suit is not maintainable in the present form ? OPD

(1C) Whether Civil Court has no jurisdiction to try the present suit? OPD

(ID) Whether notice under Section 80 CPC has not been served upon the defendants before filing the present suit? If so its effect? OPD.

2. Relief.

5. Both the parties led the evidence and thereafter, learned Civil Judge, dismissed the suit.

6. Aggrieved by the judgment and decree so passed, respondent/plaintiff filed an appeal and vide judgment and decree dated 15.09.1997, the appeal was allowed.

7. Aggrieved by the judgment and decree so passed, the present appeal has been preferred.

8. Notice of motion was issued to the respondents and later on, appeal was admitted on 08.09.1998. Respondents thereafter did not appear to contest the appeal.

9. Arguments of learned State Counsel heard.

10. Record was called.

11. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRS and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

12. The learned State Counsel assailed the judgment and decree passed by the learned First Appellate Court by contending that sale in favour of the respondent Kimti Lal is hit by the provision of Section 53 of Transfer of Property Act, 1882 and the learned First Appellate Court has ignored the provisions of Section 53 of Transfer of Property Act, 1882 and furthermore, when the land was attached as arrears of land revenue, the State has every right to put the same to auction.

13. The learned First Appellate Court has taken into consideration the provisions of Section 72(4) of Punjab land Revenue Act, 1887, which reads as under:-

> *"72. Attachment of estate or holding.*
>
> *(4)Land shall not be attached for the same arrear for a longer term than five years from the commencement of the agricultural year next following the date of the attachment, but, if the arrear is sooner discharged the land shall be released and the surplus receipts, if any, made over to the landowner."*

14. As per the evidence on record, the appellants/defendants has proved on record that revised proclamation (Ext. D2) regarding 2/3rd share of Khushi Ram was issued with regard to suit property. It is in evidence that suit property was attached on 01.06.1982. There is no evidence on record that property was earlier attached in the year 1978. It was for the appellants/defendants to prove on record that property was attached in the year 1978 before the sale deed executed in favour of appellants. The sale deed in favour of appellants is of 20.05.1982 and the attachment is of 01.06.1982, which is subsequent to the date of purchase of property by respondent/plaintiff. By the time of attachment on 01.06.1982, ownership of Khushi Ram stood extinguished vide Sale Deed dated 20.05.1982.

15. Learned First Appellate Court has rightly concluded that as per the provisions of Section 72(4) of Punjab land Revenue Act, the attachment proceedings would remain effective for a period of five years from the commencement of agricultural year next following the date of attachment, so, when the property was attached on 01.06.1982, the attachment could

have lasted up to the year 1988 as per the provisions of Section 72(4) of Punjab Land Revenue Act but the property is being auctioned in the year 1992. When after five years of attachment, the attachment stood lapsed. Suit property is no longer attached property and cannot be put to auction. The learned First Appellate Court has rightly recorded in para No.10 of the impugned judgment that appellants/defendants has left with no right to put the property on auction on the basis of attachment date on 01.06.1982.

16. Para No.10 of the impugned judgment reads as under:-

> *"10. In the opinion the learned trial Court has not correctly appreciated the provisions of Section 72(4) of the Punjab Land Revenue Act and has rather not referred the same to come to a just finding. Punjab Land Revenue Act, gives special jurisdiction to the collector to recover the amount which is payable to the Govt. as arrears of land revenue and the provisions thereof have to be strictly construed. According to the provisions of Section 72(4) of the Punjab Land Revenue Act, any attachment effected under these provisions shall remain effective only for a period of five years from the commencement of the agricultural year, next following the date of attachment. In the present case, if the attachment is considered to have taken place on 1.6.82, it remained in force only up to 1.6.87. It has also been mentioned in the warrant of attachment Ex.D1 that the attachment shall remain effective for five years. The defendants could put the property to auction only within five years from the date of attachment and if it was to be auctioned after five years, it has to be re-attached. Admittedly, the purchase was made by the plaintiff before the property was attached on 1.6.82 and therefore, the*

property of the plaintiff could not be put to auction by treating the same as that of Khushi Ram. Even for the sake of arguments, if it may be assumed that the earlier attachment was made in 1978 and the sale was effected during the proceedings of recovery of arrears of tax and the sale was made with a view to defeat the rights of the State, the property still could be put to auction only during the period of which the attachment was in force. The attachment came to an end in 1978 and therefore, the proclamation issued in 1992 for the sale of the property by auction, is not valid. The plaintiff had issued a notice on 1.6.82, regarding the purchase made by him and at that time it was known to the State that the property has been purchased by the plaintiff during that period, the property was under attachment, but even then no auction was taken by the State."

17. Furthermore, as regards the applicability of Section 53 of Transfer of Property Act, 1882 is concerned, it is for the appellants/defendants to prove on record that sale has been executed in order to defeat the creditors. For that purpose, it is not sufficient to prove that Khushi Ram was a debtor of Sales Tax Department but it was for the appellants/defendants to get the sale deed set aside by proving that the sale deed in favour of plaintiff has been executed in order to defeat the creditors of Khushi Ram. In order to prove the same, appellants/defendants were required to prove on record that after sale of suit property-Khushi Ram was not left with any property by sale of which, the arrears of sale tax due towards Khushi Ram could not have been recovered, so from the mere fact that certain arrears of sales tax were towards Khushi Ram, the sale in favour of respondent/plaintiff cannot be held to be hit by the provisions of Section

53 of Transfer of Property Act, 1882 and the learned First Appellate Court has rightly discarded the version of the appellants/defendants, as such, finding no merit in the present appeal, and the appeal filed by the State is hereby dismissed.

18. Pending miscellaneous applications, if any, are also disposed of accordingly.

(VIRINDER AGGARWAL)
JUDGE

23.09.2025
S. Pathania

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No