

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

ESA-1-2015 (O&M)

Date of decision: 27.02.2025

GOBINDER SINGH (DECEASED) THROUGH LRS.

..Appellant

Versus

NARINDER KUMAR & ORS

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

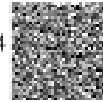
Present: Mr. S.S. Salar, Advocate
for the appellant.

Mr. Mr. Harsh Aggarwal, Advocate
for respondent No.1 and 2.

Respondent No.3 and 4 proceeded ex parte
vide order dated 15.03.2016.

ANIL KSHETARPAL, J(Oral)

1. The appellant before this Court is holder of a decree for recovery of the amount against judgment debtor Sh. Nand Kishore. Originally, Smt. Sheela Devi was owner of the property. She died on 29.02.2004. Smt. Sheela Devi had already created equitable mortgage of this property in favour of State Bank of India on 14.12.2002. On the death of Smt. Sheela Devi in the year 2004. Her property was inherited by Sh. Nand Kishore, Sh. Satish Kumar and a daughter Smt. Usha. Subsequently, Sh. Satish Kumar was authorized by Sh. Nand Kishore and Smt. Usha, who in turn sold the property to Sh. Narinder Kumar and Sh. Naresh Kumar. The suit filed by the appellant was decreed on 26.04.2005.



2. The objection petition filed by Sh. Narinder Kumar and Sh. Naresh Kumar was dismissed by the Executing Court but allowed by the First Appellate Court.

3. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

4. Learned counsel for the appellant submits that the property was already attached vide order dated 25.02.2003, hence, it could not be sold. He submits that once Sh. Nand Kishore inherited the property after the death of his mother, the attachment would continue and hence, the sale of 1/3rd share is illegal.

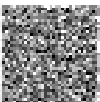
5. Per contra, learned counsel for the respondent No.1 and 2 submits that there is no evidence to the effect that the property was ever attached. He submits that only a conditional attachment order was passed during the pendency of the suit for recovery, however, there is no further evidence that the property was ever attached. He submits that the respondents are bonafide purchasers of the property for valuable consideration with the permission of the bank, hence, the First Appellate Court's order should be sustained.

6. This Court has considered the submissions of learned counsel for the parties.

7. The entire foundation of appellant's case is the order of attachment.

8. The operative part of the same reads as under:-

“Balance of convenience also lies in favour of plaintiff and defendant Nand Kishore is directed to furnish security of Rs.7 lacs to pay the decretal amount of plaintiff, is decree passed against defendant No.1 within a period of 7 days. Otherwise the application of plaintiff is deemed to have been allowed and property detailed and



described in the head note of application is attached before judgment.”

9. Learned counsel for the appellant admits that there is no material to prove that the property was actually attached or Sh. Nand Kishore failed to furnish security as ordered.

10. It is evident that a conditional order of attachment was passed. In absence of evidence to prove that the order came into effect and was given effect to, no ground to interfere is made out.

11. Dismissed accordingly.

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

February 27th, 2025

Ay

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No