

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CMPMO No. 252 of 2007.

Date of Decision: 30.6.2008.

Sh.Udham Lal

... Petitioner

Versus

Sh.Bangu Ram

... Respondent.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner (s) : Mr.O.P. Sharma, Senior Advocate with
Mr.K.S. Thakur, Advocate.

For the Respondent : Mr.Romesh Verma, Advocate

Deepak Gupta, J.(oral)

This petition under Article 227 of the Constitution of India is directed against the order of the learned Civil Judge (Junior Division), Jubbhal dated 8.10.2007 whereby he has allowed the application filed by the respondent (hereinafter referred to as the Decree Holder) and directed that the property of the petitioner (hereinafter referred to as the Judgment Debtor) be put to sale.

Briefly stated the facts of the case are that the respondent Bangu Ram had filed a suit being Civil Suit No.31/1 of 99/96 against the present petitioner. The DH claims to be owner in possession of the suit land. This suit was decreed in his favour on 30.11.1999. Appeal filed by the JD

was dismissed by the learned District Judge, Shimla. Thereafter, no further appeal was carried and the judgment attained finality.

According to the Decree Holder, the JD and his family members did not abide by the judgment and decree and intentionally and willfully disobeyed the same. Therefore, an execution petition No.3/10 of 2001 was filed on 14.6.2001. In this execution petition, the executing Court held that the JD, his wife and sons were guilty of disobeying the decree and consequently warrant of attachment of the properties of the JD was issued. This order was passed by the learned Civil Judge (Junior Division), Jubbhal on 18.8.2004 wherein he held as follows:

"11.In view of the discussion above, it is clear that the respondents/J.Ds. willfully disobeyed the judgment and decree dated 30.11.1999, of this Court so the petition for execution filed by petitioner/D.H. is allowed and the immoveable properties belonging to the respondents/J.Ds is ordered to be attached on taking of necessary steps by the petitioner/D.H. in this regard. Let warrant of attachment of immoveable properties belonging to the respondents/J.Ds be issued for 17.9.2004. Petitioner/D.H. is ordered to take steps within 5 days."

This order does not appear to have been challenged before any Court. Consequently, the land of the JD comprising in khata khatauni No.41/87, khasra Nos.25,26, 27, 28 and 29, kitta 5 measuring 0-25-45 hectares situated in

Mauja Pahar, Tehsil Jubbal and khata No.65, khatauni No.265 to 268, kita 5, measuring 1-02-37 hectares situated in mauja Dhar, Tehsil Jubbal to the extent of 1/8th share of Sh.Udham Lal was attached vide Roz Namcha dated 19.10.2004.

It appears that despite attachment of the property and time being given to the JD to comply with the order of this Court the JD again entered upon the suit land and started pruning work. According to the DH on 23.3.2005 the JD entered upon the suit land and tried to prune the apple trees and also dig the beds of the apple plants. The DH, therefore, prayed that the attached property of the JD be sold and compensation of Rs.one lakh be awarded to the DH. He also prayed that the JD be also sent to civil prison.

The JD contested this application. The learned Civil Judge (Junior Division), Jubbal vide the impugned order has come to the conclusion that in fact on 23.3.2005 the JD did try to interfere in the possession of the decree holder and thus willfully disobeyed the decree. He has therefore ordered that the attached property be sold on the decree holder taking necessary steps in this regard. This order is under challenge in this petition.

Shri O.P. Sharma, learned senior counsel for the JD has vehemently contended that the order of the learned Court below is against law. He submits that the findings that the JD has again disobeyed the decree is incorrect and therefore prays that the order be set-aside.

On the other hand Sh.Romesh Verma, learned counsel for the DH submits that the JD is an incorrigible litigant who despite various opportunities granted to him has not shown any intention of obeying the orders of the Court.

The order of attachment under Order 21 Rule 32(2) was passed more than 2 years back. The JD despite such order being passed did not obey the decree and order. Therefore, in terms of Order 21 Rule 32(3) the property of the JD has to be sold. The findings of the learned Civil Judge that the JD has disobeyed the decree is a pure finding of fact. This finding is based on the evidence led by the DH. The DH has not only examined himself but has also examined four of his employees who have all stated that the JD and his family members entered the land which is the subject matter of the decree and pruned the apple trees and also started some digging operation on 23.3.2005. This has been done despite the earlier orders passed against the JD. This shows that the JD has scant respect for law. Therefore, the order of

the learned Civil Judge (Junior Division), Jubbal dated 8th October, 2007 calls for no interference.

However, both the attached properties are not required to be sold at one go. It is, therefore, ordered that out of the two attached properties one of them shall be first put to sale. The other property shall remain attached and in case the judgment debtor again interferes in the land and disobeys the decree the same can also be put to sale.

The petition is disposed of in the aforesaid terms. No order as to costs.

June 30, 2008.
PV

(Deepak Gupta),J.