

STATE OF PUNJAB AND ANOTHER

DINA NATH

November 21, 1983

[A.P. SEN AND D.P. MADON, JJ.]

*Code of Civil Procedure, 1908, Ss. 2(2) and 60(1) (ccc).**Residential house exempt from attachment and sale in execution of court decree—Collector whether competent to order attachment and sale of residential house under Land Revenue Recovery Act.**Punjab Land Revenue Act 1887. Liquor vendor—Failure to pay licence fee—Recovery initiated under Land Revenue Recovery Act—Collector if could order attachment and sale of residential house.*

The respondent—a liquor vending licensee defaulted to pay licence fee inspite of repeated reminders. Recovery proceedings under the Punjab Land Revenue Act, 1887 were initiated against him. The Collector issued a proclamation prohibiting the transfer or creation of a charge by the respondent on his half share in an immoveable property, consisting of a plot of land and a building thereon, and notified the property for auction.

The respondent, filed a suit for permanent injunction restraining the appellant—State and the Collector from auctioning his half share, on the ground that the building was being used by him for his residence, and he had no other residential house, and that therefore the half share of the residential house was exempt from attachment under clause (ccc) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908. The trial court dismissed the suit and this order was confirmed in appeal by the District Judge.

Allowing the respondent's second appeal, the High Court upheld his contention, and issued a permanent injunction only with regard to that portion of the building in which he was residing.

Allowing the appeal to this Court,

HELD : (1) The High Court was wrong both in its criticism of the subordinate courts and in allowing the respondent's second appeal. [847 E]

2. Section 60 of the Code has no application to attachment and sale in any proceedings other than in execution of a decree of a civil court. It applies only to execution of a decree of civil court. It declares what properties are liable to be attached and sold in execution of such a decree and the proviso to sub-section (1) of section 60 sets out the properties which are not liable to such attachment or sale. The expression "such attachment or sale" in the proviso refers to the attachment and sale mentioned in sub-section (1) of section 60, that is to attachment and sale in execution of a decree of a civil court. The section does not apply to an attachment and sale under any other statute unless made expressly applicable thereto. [847 H; 848 A-B]

In the instant case the attachment and the auction sale were not in execution of any decree of a civil court but were in pursuance of an order made by an officer authorised adopt proceedings under the Punjab Land Revenue Act, 1887 for recovery of revenue due to the State. There is no provision in this Act which makes the provisions of section 60 of the Code applicable to attachment and sale for recovery of revenue under the said Act.

[848 D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7494 of 1983.

Appeal by Special leave from the Judgment and Order dated the 6th May, 1981 of the Punjab & Haryana High Court in R.S.A. No. 2944 of 1980.

S.K. Bagga for the Appellants.

The Judgment of the Court was delivered by

MADON, J. This appeal by special leave from the Judgment and Decree in Second Appeal of the Punjab and Haryana High Court involves the determination of the question whether section 60 of the Code of Civil Procedure, 1908, applies to an attachment and sale in revenue recovery proceedings adopted under the Punjab Land Revenue Act, 1887 (hereinafter referred to as "the said Act").

The facts which have given rise to this question are that Dina Nath the Respondent along with one Gora Lal and Sat Pal, had been granted a liquor vending licence for the year 1968-69 by the Excise and Taxation Department of the State of Punjab, Patiala Division, in respect of which they had to pay a sum of Rs. 1,38,000 as licence fee. The licencees paid a sum of Rs. 86,450, leaving the balance unpaid in spite of repeated reminders. Ultimately, recovery proceedings under the said Act were started by the department and the Collector, Excise and Taxation Department, Patiala, by his order

A dated January 16, 1976, issued a proclamation prohibiting the transfer or creation of a charge by the Respondent of his half share in "an immovable property consisting of a plot of land bearing Khewat No. 374, Khatuni No. 511, Khasra No. 397/0-19, situate in village Ghagga, with a building constructed thereon. The auction in respect of the said share of the Respondent in the said property was notified for June 14, 1977. Just a day prior to the holding of the said auction sale the Respondent filed a suit in the Court of Sub-Judge, 1st Class, Patiala-C, being Suit No. 472/13-6-77, against the State of Punjab and the Collector-cum-Deputy Excise and Taxation Commissioner, Patiala Division, for a permanent injunction restraining the State and the Collector-cum-Deputy Excise and Taxation Commissioner from auctioning his said half share. The contention of the Respondent was that a part of the building standing on the said plot of land was being used by him for his residence and he had no other residential house and, therefore, his said half share was exempt from attachment under clause (ccc) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'Code'), inserted in the said section 60 by a State amendment. The proviso to sub-section (1) of the said section 60 sets out the properties which are not liable to attachment or sale, and the said clause (ccc) provides as follows :

E " (ccc) one main residential house and other buildings attached to it (with the material and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to a judgment-debtor other than an agriculturist and occupied by him;

F Provided that the protection afforded by this clause shall not extend to any property specifically charged with the debt sought to be recovered."

G It is pertinent to note that in the said suit the Respondent did not challenge his liability to pay the amount claimed from him. Several contentions were raised in the written statement filed by the Appellants, who were the defendants to the said suit, including the contention that the property attached and notified for sale was not exempt from attachment and sale. The Appellants also contested the jurisdiction of the court. The Trial Court upheld both these contentions and dismissed the suit with costs. The Respondent then filed

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an appeal to the District Judge, Patiala, being Civil Appeal No. 554 of 5.9.79. The Additional District Judge, Patiala, who heard the said appeal, dismissed it with costs. The Respondent thereupon approached the Punjab and Haryana High Court in second appeal, being Regular Second Appeal No. 2944 of 1980. The learned Single Judge of the High Court, who heard the said appeal, after observing that "the conclusion arrived at by the trial court on facts was perverse whereas the appellate court applied totally a wrong law in deciding the appeal", allowed the said second appeal, holding that the portion of the said building used for residence was exempt from attachment and sale under clause (ccc) of the proviso to the said section 60, while that portion in which the liquor shop was situated was liable to be attached, and accordingly issued a permanent injunction with regard to the portion in which the Respondent was residing and dismissed the suit so far as it related to the portion of the building in which the liquor shop was situated. The parties were further directed to bear their own costs. The question of jurisdiction of the civil court to entertain and try the suit filed by the Respondent does not appear to have been raised before the High Court. It is against this judgment and decree of the High Court that this appeal is directed.

In our opinion, the learned Single Judge of the High Court was wrong both in his criticism of the subordinate courts and in allowing the Respondent's said Second Appeal. Section 60 of the Code specifies the properties which are liable to attachment and sale in execution of a decree. The opening words of sub-section (1) of section 60 are "The following property is liable to attachment and sale in execution of a decree". Clause (2) of section 2 of the Code defines the term "decree". The relevant provisions of the said definition are as follows :

"(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy, in the suit and may be either preliminary or final. ..."

Section 60 of the Code thus applies only to execution of the decrees of civil courts and declares what properties are liable to be attached and sold in execution of such a decree and the proviso to sub-section (1) of section 60 sets out the properties which are not liable to such attachment or sale. The opening words of the said

A proviso are "Provided that the following particulars shall not be liable to such attachment or sale, namely":— The expression "such attachment or sale" in the said proviso refers to the attachment and sale mentioned in sub-section (1) of section 60, that is, to attachment and sale in execution of a decree. On a plain reading of the said section 60, it is clear that that section has no application to attachment and sale in any proceedings other than in execution of a decree of a civil court. The provisions of section 60 of the Code do not apply to an attachment and sale under any other statute made expressly applicable thereto. So far as the said Act is concerned, it contains a complete code providing for the modes and machinery for recovery of arrears of revenue. The attachment in question was levied under the provisions of the said Act and the sale which was notified was also under the provisions of the said Act. The attachment levied on, and the auction sale notified in respect of, the Respondent's half share in the said property were not in execution of any decree of a civil court but were in pursuance of the order made by an officer authorized to adopt proceedings under the said Act for recovery of revenue due to the State. There is no provision in the said Act which makes the provisions of section 60 of the Code applicable to attachment and sale for recovery of revenue under the said Act. The properties, if any, which are exempt from attachment and sale in revenue recovery proceedings under the said Act would be only such properties as are so exempted by the said Act. There is no provision in the said Act corresponding to cl. (ccc) of the proviso to sub-section (1) of section 60 of the Code, and the half share of the Respondent in the said property was, therefore, not exempt from attachment and sale in revenue recovery proceedings adopted under the said Act. Consequently, the Respondent's suit was liable to be dismissed on this ground alone.

G For the reasons set out above, we allow this appeal and set aside the Judgment and Decree of the Punjab and Haryana High Court and dismiss with costs the said Regular Second Appeal No. 2944 of 1980 filed by the Respondent and restore the decree passed by the Addition District Judge, Patiala-C, in Civil Appeal No. 554 of 5.9.79 and the decree passed by the Sub-Judge, 1st Class, Patiala-C, in Suit No. 472/13.6.77.

H The Respondent will pay to the Appellants the costs of this appeal.

N.V.K.

Appeal allowed.