

## Ram Naresh And Anr. vs Ganesh Mistri on 23 August, 1951

**Equivalent citations: AIR1952ALL680, AIR 1952 ALLAHABAD 680**

ORDER

Brij Mohan Lall, J.

1. This is a second appeal by the judgment-debtors against a decision given in execution proceedings by the learned District Judge of Lucknow upsetting a decision of the learned Munsif Havali, Lucknow.

2. The respondent brought a suit to recover a sum of Rs. 1300 against the appellants. During the pendency of the suit the appellants' residential house situate in village Arjunpur and a grove were attached before judgment. On the date of hearing, the suit was compromised and on the basis of that compromise the following judgment was delivered by the Court:

"The suit of the plaintiff is decreed for Rs. 1,100 only on admission of the defendants with proportionate costs on uncontested basis. Future interest shall run at 3 per cent. per annum after the expiry of 6 months, if the amount is not paid within 6 months. The house and the grove which have been attached shall continue to be attached till the amount is paid off."

No payment was made by the appellants, The result was that the respondent put the decree into execution and sought the sale of the grove and the house. The appellants filed an objection under Section 47, Civil P. C. contending that the house and the grove could not be sold in execution of the decree, This appeal is confined to the house only. The learned Munsif allowed the objection and held that the house was exempt from sale under Section 60(c), Civil P. C. The learned District Judge differed from the Munsif and held that the house was saleable. Hence this second appeal by the judgment debtors.

3. Two points were conceded by the decree-holder before the learned District Judge and they are conceded before me also, namely, that the appellants are agriculturists within the meaning of the term as used in Section 60, Civil P.C., and that they have got no other house than the one which is under attachment.

4. The learned District Judge repelled the appellants' contention on the ground that there was no evidence to prove that the house was being used for agricultural purposes. Further he held that since the appellants had agreed that the house should remain under attachment, they should be deemed to have agreed to its sale also.

5. It is true that it has been held in some cases that in order to avail of the protection afforded by Section 60(c), Civil P. C., an agriculturist must prove that he is occupying the house as such. In other words, an agriculturist who cultivates (say) one thousand bighas of land in Ms village and purchases a house in the city of Lucknow in order to enable his sons to receive university education will not be entitled to claim exemption from sale in respect of his Lucknow house notwithstanding the fact that he is an agriculturist and the house may be in his occupation. But the present case is a different one. Here it is, as already stated above, an admitted fact that the appellants have no other house in their occupation. It is also an admitted fact that they are agriculturists. Therefore it is an inevitable conclusion that they are occupying the house for agricultural purposes. No further evidence was needed on the point. I am, therefore, of the opinion that the first ground on which the learned District Judge based his decision carries no weight.

6. Next comes the second ground. In this connection it may be pointed out that Section 60(c) forbids the attachment and sale "in execution of decree" of an agriculturist's house. In the present case the attachment was made before judgment and not in execution of the decree. Therefore the attachment was not invalid. The order of the Court directing the attachment to continue till the debt is paid off also does not contravene any provision of law. When the respondent put his decree into execution he could avail of the attachment made before judgment and by virtue of the provisions of Order 38, Rule 11, Civil P. C. it was not necessary for him to get the house re-attached. But the sale of the house is distinctly forbidden by Section 60, Civil P. C. The appellants never agreed to the sale of the house at any stage of the proceedings. The Court also never directed that the house should be sold. It is stated in the judgment under appeal that "the only object of attachment is to secure the property for sale: if it cannot be sold at all the attachment' of it would be meaningless."

With this argument I am unable to agree. The object of keeping the attachment subsisting might well have been to prevent the appellants from alienating the property.

7. There can be no estoppel against a statute. Even if the appellants had stated in express terms that notwithstanding the provisions of Section 60, Civil P.C., they were willing to get their house sold in execution of the decree, they could not be pinned down to that statement. But in this case they never agreed to get their house sold.

8. Reference may also be made in this connection to Explanation (1-A) inserted in Section 60 by the U.P. Act XXXV [35] of 1948. It runs as follows :

"(1-A) Particulars mentioned in Clause (c) are exempt from sale in execution of a decree, whether passed before or after the commencement of the Code of Civil Procedure (United Provinces Amendment) Act, 1948 for enforcement of a mortgage or charge thereon."

It will, therefore, follow that even if it had been, possible by any process of reasoning to hold that a charge had been created on the house in question, still the house could not be sold.

9. I am, therefore, of the opinion that this appeal must succeed. But since the decree provides that the house shall remain under attachment so long as the debt is not paid off and since this provision is, as pointed out above, not illegal, the attachment shall continue till the debt is paid off.

10. The appeal is allowed. The decree of the learned District Judge is set aside and that of the learned Munsif is restored. The house shall not be sold in execution of the decree but the attachment shall subsist so long as the debt is not paid off. The appellants shall get costs of the appeal.