

APPELLATE CIVIL

Before Grover, J.

SAMPAT KUMAR AND OTHERS,—Appellants

versus

NATHU RAM,—Respondent.

Civil E. S. A. No. 548 of 1957

Code of Civil Procedure (V of 1908)—Section 60(1) (ccc) as amended by section 34 (ccc) of the Patiala Relief of Indebtedness Act (V of 1999 Bk.)—Proviso to—Scope of—Property sought to be attached not specifically charged with the debt sought to be recovered —Whether exempt from attachment—Merger of Pepsu with the Punjab—Laws prevalent in Pepsu preserved till modified by the Punjab Legislature—Proviso to Section 60(1) (CCC) of the Code of Civil Procedure in the Punjab different from that in the Pepsu—Whether Pepsu provision can be struck down as discriminatory under Article 14 of the Constitution.

1958

Feb., 25th

Held, that the words used in the Proviso to Section 60(1)(ccc) of the Code of Civil Procedure as amended by section 34 (ccc) of the Patiala Relief of Indebtedness Act, V of 1999 Bk., have to be given their plain and grammatical meaning, and so interpreted, the clear scope of the proviso would be not to give protection to any property of a judgment-debtor which may be mortgaged irrespective of

the fact whether it is specifically charged with the debt sought to be recovered, or is charged with any other debt.

Held, that after the merger of erstwhile Pepsu with the Punjab, section 60(1) (CCC) as applicable to areas comprised in the erstwhile Pepsu State cannot be struck down by Article 14 of the Constitution as being discriminatory on the ground that it is different from section 60(1) (CCC) of the Code of Civil Procedure as prevalent in the Punjab. There is no dispute that there can be territorial classification and by virtue of the provisions of section 119 of the States Reorganization Act, 1956, the laws which prevailed in the territories of erstwhile Pepsu State have been preserved with regard to aforesaid territories until the legislature of the present State of Punjab makes a different provision. It cannot, therefore, be said that there is no reasonable basis for classification.

Rewti v. Chiranjil Lal (1) and Ramji Lal v. I. T. Officer (2), relied on; *Dulla v. Ram Chand (3)* and *Birdichand v. State of Rajasthan (4)* distinguished.

Execution Second Appeal from the order of Shri Murari Lal Puri, District Judge, Patiala, dated the 18th March, 1957, affirming that of Shri Harish Chander Gaur, Sub-Judge, II Class, Patiala 'B', dated the 30th November, 1956, accepting the objection of application and exempting the house from attachment.

J. N. KAUSHAL, for Appellants.

B. R. AGGARWAL, for Respondent.

JUDGMENT

Grover, J.

GROVER, J.—The question involved in this appeal is whether the house which was got attached by the decree-holder was exempt from attachment. There is no dispute that the house in question is the residential house of the judgment-debtor. It, however, stands mortgaged with another creditor

(1) A.I.R. 1954 Lah. 29
 (2) A.I.R. 1951 S.C. 97
 (3) A.I.R. 1938 Lah. 736
 (4) A.I.R. 1953 Raj. 27

by the name of Girja Mal, and the question is whether in view of the provisions of section 34(ccc) of the Patiala Relief of Indebtedness Act, 1999 Bk., exemption can be claimed by the judgment-debtor. The aforesaid provision amended section 60 of the Code of Civil Procedure and in subsection (1), the following was to be inserted:—

Sampat Kumar
and others
v.
Nathu Ram
Grover, J.

“ * * * * *
(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; provided that the protection afforded by this subsection shall not extend to property which has been mortgaged.”

The difficulty has arisen with regard to the true scope of the proviso to this provision. The contention which found favour with the Courts below was that the mere fact that the judgment-debtor had mortgaged the house with a third party did not bring him within the mischief of the proviso and disentitle him to the protection afforded by section 60 as amended, the view obviously being that the proviso would become applicable only if the property had been mortgaged with the decree-holder. Actually this very language was employed in section 35 of the Punjab Relief of Indebtedness Act (Act VII of 1934), but that Act was later on amended by Punjab Act, VI of 1942, and according to the amended provision the proviso reads as follows:—

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

Sampat Kumar
and others
v.
Nathu Ram

Grover, J.

The contention raised on behalf of the judgment-debtor is that the proviso as it stood according to the Patiala Act, should be given the same meaning as we have to give to the proviso according to Punjab Act, after the amendment made in 1942. In other words it is urged that the real intention of taking away the protection from the judgment-debtor was with regard to property which may have been specifically charged with the debt sought to be recovered and such a protection could never have been intended to be withdrawn if the property was mortgaged with a third party who had no connection with the debt sought to be recovered.

It seems to me that the words used in the proviso according to the Patiala Act, have to be given their plain and grammatical meaning, and so interpreted, the clear scope of the proviso would be not to give protection to any property of a judgment-debtor which may be mortgaged irrespective of the fact whether it is specifically charged with the debt sought to be recovered, or is charged with any other debt. The learned District Judge relied on *Dulla v. Ram Chand* (1), but that was a very different case and dealt with the provisions of section 60(1)(c), Civil Procedure Code, and it was held that the mere fact that the judgment-debtor mortgaged the house with possession in favour of the decree-holders and took it on rent from them did not disentitle him to the protection afforded by section 60(1)(c) as the judgment-debtor never gave up possession of the house and had been using it throughout for purposes subservient to agriculture. No such question is involved in the present case and, if any authority can be of assistance, reference may be made to *Rewati v. Chiranji Lal* (2). In that case

(1) A.I.R. 1938 Lah. 736

(2) A.I.R. 1944 Lah. 29

the effect of the amendment of section 60(1)(ccc) by Punjab Act VI of 1942, came up for consideration. It is clear from the facts of that case that it was taken for granted that before the amendment when the proviso used the same language as the proviso in the Patiala Act, property was liable to be sold although the same was mortgaged to a third party and was not specifically charged with the debts sought to be recovered. It must, therefore, be held that the present case was covered by the proviso to section 60(1)(ccc) of the Civil Procedure Code as amended by the Patiala Relief of Indebtedness Act, 1999 Bk.

The other question which has been agitated on behalf of the judgment-debtor is that after the merger of erstwhile Pepsu with Punjab, section 60(1)(ccc) as applicable to areas comprised in the erstwhile Pepsu State should be struck down by Article 14 of the Constitution as being discriminatory. It is contended that in the other areas of the State of Punjab, section 60(1)(ccc), as amended by the Punjab Relief of Indebtedness Act (Act VI of 1942), restricts the mischief of the proviso only to those houses which have been specifically charged with the debt sought to be recovered and, therefore, the judgment-debtors in the same State enjoyed protection in a varying degree. It is pointed out that in this way the judgment-debtors in those areas which comprised the former State of Punjab, have greater protection against attachment and sale of their residential houses whereas the judgment-debtors in the territories comprised in the erstwhile State of Pepsu are placed under a greater disability and their residential houses are not immune from attachment and sale if they are mortgaged to third parties. It is conceded that there can be territorial classification, but it is urged that there is no reasonable basis for it.

Sampat Kumar
and others
v.
Nathu Ram
—
Grover, J.

Sampat Kumar
and others
v.
Nathu Ram
—
Grover, J.

My attention has been invited to *Birdichand v. State of Rajasthan* (1). In that case Wanchoo, C. J., and Modi, J., held that enforcement of Part IV of the Marwar Relief of Indebtedness Act created discrimination between that part of Rajasthan which was formerly Marwar State and the rest of Rajasthan and would, therefore, be hit by Article 14 unless it could be justified on the basis of reasonable classification, or on the ground that the legislation was a law for the good of the community at large in that part of Rajasthan and should be saved as a progressive law. It was held that there was no basis for coming to a conclusion that the part of Rajasthan to which the Act applied had something peculiar which required the law as compared with the other parts of the State and the Act could be saved as a piece of progressive and ameliorative measure. The said decision cannot be of much assistance in deciding the point which is involved in the present case. The impugned provision in the present case governs the territories comprised in the erstwhile State of Pepsu by virtue of the provisions of section 119 of the States Reorganization Act, 1956. In *Ramjilal v. I. T. Officer* (2), it has been observed that the provision that pending proceedings should be concluded according to the law applicable at the time when the rights or liabilities accrued and the proceedings commenced is a reasonable law founded upon a reasonable classification which is permissible under the equal protection clause and to which no exception can be taken. These observations are quite apposite in the present case because on merger the laws which prevailed in the territories of erstwhile Pepsu State have been preserved with regard to the aforesaid territories

(1) A.I.R. 1958 Raj. 27

(2) A.I.R. 1951 S.C. 97

until the legislature of the present State of Punjab makes a different provision, and it cannot be said that there is no reasonable basis for classification in view of the aforesaid reasons. The contention raised, therefore, must be repelled.

Sampat Kumar
and others
v.
Nathu Ram
—
Grover, J.

In the result the appeal is allowed and the decision of the Courts below is set aside. The matter will now go back to the executing Court for further proceedings in accordance with law. Parties have been directed to appear before the executing Court on 15th March, 1958. There will be no order as to costs in this Court.

K.S.K.