Pritam Singh and another v. The State

Harnam Singh, J.

found on the shirt of Gehna Singh, exhibit P. 7, and on the shirt of Pritam Singh, exhibit P. 10.

For the foregoing reasons I have no doubt that Gehna Singh and Pritam Singh have been rightly convicted under section 302 read with section 34 of the Code. As stated hereinbefore, sharp-edged weapon and blunt weapons were used in causing the death of Wasakhi Ram showing that at least two persons were involved in this murder.

As regards the sentence it is clear that the crime was deliberate and was committed for the theft of the goats. That being so, I do not see any mitigating circumstance to justify the imposition of the lesser penalty prescribed by law for the offence under section 302 of the Code.

In the result I would dismiss Criminal Appeals Nos. 592 and 593 of 1953 and confirm the sentence of death imposed upon the appellants.

Khosla, J.

KHOSLA, J.—I agree.

APPELLATE CIVIL

Before Bhandari, C.J.,

ROOP CHAND,—*Appellant*

versus

GULZARI LAL, ETC.—*Respondents*

1952

Nov. 30th

Execution Second Appeal No. 369 of 1952.

Delhi and Ajmer-Merwara Rent Control Act (XIX of 1947)—Section 9—Arrears of rent deposited under section 9 by the tenant—Whether liable to attachment in execution of the decree against the tenant—Rule stated.

Held, that in the absence of a specific provision to the contrary, the property which is *custodia legis* cannot be attached in execution of a decree unless the specific purpose for which the property is held has been fulfilled. Thus money paid into Court under statute is not attachable. Protection from attachment does not extend to property where the custody of the officer is not *custodia legis* or where the levy or custody is invalid or wrongful, or where legal custody is discharged or abandoned, or where for any reason whatsoever the custody is changed from *custodia legis* into a personal obligation to the owner. If the property in *custodia legis*

exceeds in value the amount for which it is being held, the excess alone is liable to attachment.

Execution second appeal from the order of Shri D. R. Pahwa, P.C.S., II Additional District Judge, Delhi, dated the 16th June, 1952, affirming that of Shri Rajinder Singh, Sub-Judge, Ist Class, Delhi, dated the 26th March, 1952, dismissing the objection petition.

BHAGWAT DYAL, for Appellant.

AMAR NATH MONGA and SURENDRA NATH ANAND, for Respondent.

JUDGMENT

A.N. BHANDARI, C.J. This petition raises a question of considerable importance and difficulty, namely, whether a sum of money which is deposited in Court by a tenant under the provisions of section 9 of the Delhi and Ajmer-Merwara Rent Control Act, 1947, is liable to attachment in the execution of a decree. A. N. Bhandari, C.J.

The facts of the case are simple and not in dispute. One Gulzari Mal, a landlord of Delhi, brought a suit for the ejectment of his tenant Rup Chand on the ground that the latter had failed to pay the rent of the shop leased out to him. Taking advantage of section 9 of the Delhi and Ajmer-Merwara Rent Control Act, which declares that no decree for ejectment shall be passed against a tenant who deposits in Court the arrears of rent together with costs on the first hearing of the suit, Rup Chand deposited in Court a sum of Rs. 1,522 on account of arrears of rent and the costs of the suit. The landlord who held a previous decree against the tenant in a sum of Rs. 2,862 promptly proceeded to attach this amount in execution of that decree. The tenant objected to the attachment but his objections were overruled both by the executing Court and the learned District Judge on the ground that as the tenant who had deposited the money in Court had disposing power or control over the amount, the amount was not exempt from attachment. The tenant has come to this Court in second appeal and the question for

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this Court is whether the Courts below have come to a correct determination in point of law.

Section 60 of the Code of Civil Procedure declares that all property belonging to the judgment-debtor or over which he has a disposing power which he may exercise for his own benefit is liable to attachment and sale in the execution of a decree. The question is whether a judgment-debtor can be said to have disposing power over property in *custodia legis,* that is property or money deposited in Court under the provisions of law or in the custody of an officer of a Court under Civil process and which is held to be disposed of in some particular manner prescribed by law or according to orders of the Court.

A person can have no disposing power over property which is in the custody of the Court, for it is a general proposition of law that in the absence of a specific provision to the contrary, the property which is in *custodia legis* cannot be attached in the execution of a decree unless the specific purpose for which property is held has been fulfilled. Thus money paid into Court in satisfaction of a judgment or deposited in Court under statute is not attachable. Protection from attachment does not extend to property where the custody of the officer is not *custodia legis,* or where the levy or custody is invalid or wrongful, or where legal custody is discharged or abandoned, or where for any reason whatsoever the custody is changed from *custodia legis* into a personal obligation to the owner. If the property in *custodia legis* exceeds in value the amount for which it is being held, the excess alone is liable to attachment.

In view of the importance of the matter, I consider it desirable to mention certain cases which illustrate the principles mentioned above. *Ex parte Banner, In* re Keyworth (1), the plaintiff brought an action upon an overdue bill

(1) (1874) 9 Ch. A. 379

of exchange for £1300 against the acceptors. The defendants obtained leave to appear and defend the action upon paying into Court £880 to abide the event. Shortly thereafter the defendants filed a liquidation petition. The liquidator claimed the £880 for distribution among the creditors generally but Bacon, C.J., disallowed the claim observing :—

> "According to all the cases cited, the £880 paid into Court ceased, upon its being paid into Court, to be the property of the debtors; it was no longer part of to judgment, and the judgment had been for the plaintiff for £880, the matter would have been quite clear and plain; the money would have belonged to the plaintiff."
> their estate. If the action had gone on

This decision was affirmed in appeal and as the sum in question was paid into Court to abide the event of the action, it belonged to the party which was found eventually to be entitled thereto.

In Maple and Company v. *Earl of Shrewsbury and Talbot*, (1), it was held that where money is paid into Court with a defence denying liability, and the plaintiff does not accept it in satisfaction, an order for payment of such money out of Court cannot be made until after the trial or other determination of the action.

The Courts in India have also taken a similar view in at least three pre-emption cases. In *Abdus Salam* v. *Wilayat Ali Khan* (2), the holder of a decree for pre-emption paid the decreed pre-emptive price into Court. A creditor of the decree-holder applied for attachment of the money so paid, and ultimately was allowed by the Court to withdraw a portion of it. After the decree for pre-emption had been confirmed in

(1) (1887) 19 Q.B.D. 463
(2) I.L.R. (1897) 19 All. 256

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appeal, the pre-emptor applied for possession of the pre-empted property. A Division Bench of the Allahabad High Court held that the decree-holder was entitled to obtain possession, and that it was not competent to the Court to pay out to any one but the person entitled to it under the decree for pre-emption any portion of the pre-emptive price, so long as the decree for pre-emption was not modified or reversed in appeal. In making the order of the Court the learned Judge observed as follows :—

> "Money paid into Court in a suit cannot be taken out of Court by a creditor of the man who pays it in so long as the suit is pending, or unless the result is that the person who paid it in is held entitled to withdraw the money or some part of it, and then the creditor of the person who paid it in can only have execution against so much of that money as his judgment-debtor would be entitled to take out of Court. Money paid into Court by a plaintiff in pre-emption to be paid over in a certain event to the defendant in the suit is in custody of the Court until the result of the litigation is known."

The second case was that of *Sant Singh* v. *Ghasita* (1). In this case, the holder of a decree for pre-emption duly deposited the purchase money into Court as directed and obtained possession of land. Subsequently the money so paid in having been attached by a creditor of the decree-holder, who took it out of Court in execution of his own decree, the vendees applied for a return to them of the land as they had received no purchase-money, and the first Court ordered the pre-emptor to deposit a further sum for payment to the vendees. The Chief Court held that the money deposited in a Court to be paid to vendee under a pre-emption decree cannot be withdrawn

(1) 21 P.R. 1902

by an attachment under a decree of a third party and that the Court is not competent to pay it out to any one but the person entitled to it under the decree for pre-emption.

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In the third pre-emption case *Abdulla* v. *Amirud-Din* (1), the holder of a decree for pre-emption duly deposited the purchase-money amounting to Rs 1,475 in Court as directed. Subsequently a reversioner of the vendor brought a suit to have it declared that the sale was without necessity, and should not be allowed to affect his rights except in respect of Rs 300 and obtained a decree. The pre-emptor then asked the Munsif for the return of their purchase-money as they no longer wished to go on with the purchase, as their decree of pre-emption had been superseded by the declaratory decree. The Munsif without informing the vendee ordered the refund of the money. Anderson, J., who delivered the judgment of the Chief Court, observed as follows :—

> "If the pre-emptor thus steps into the vendee's shoes, it is pre-eminently just that the vendee, not the pre-emptor, should have the control of the purchase-money which forms the consideration for his resigning to the pre-emptor his right and title to the property. It would be most anomalous to allow the pre-emptor, after putting his suit through the Court, and obtaining a decree, which could only lapse on failure to pay in the purchase-money, to change his mind suddenly, and take back his money as might suit his convenience, and the fact that he had made a bad bargain and would have to pay off reversioners could make no difference to his legal position."

It was presumably in view of these decisions and the general principles of law that the Legis-

(1) 76 P.R. 1902

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lature proceeded to declare in section 11 of the Punjab Pre-emption Act, 1913, that no sum deposited in or paid into Court by a pre-emptor shall, while it is in the custody of the Court, be liable to attachment in the execution of a decree or order.

Mr. Monga, who appears for the landlord contends that as the judgment-debtor in the present case deposited a sum of Rs 1,522 in Court only with the object of being able to retain possession of the shop and was at liberty to withdraw it at any time, he must be deemed to have full disposing power over the said amount, which he may exercise for his benefit. In support of this contention he has invited my attention to *Province* of *West Bengal* v. *Bholanath Sen*, (1). In this case, it was held that where the appellant to the Privy Council deposits an amount in Court as security for the costs of the respondents, the appellant still retains some disposing power over the amount deposited, which he may exercise for his benefit. The proposition is probably correct so far as it goes but the learned Judges who delivered this judgment were not prepared to hold that it is open to a creditor to attach the money which has been deposited in Court by way of security for the costs of the respondents. They observed that if the appeal fails and the costs decreed do not exhaust the deposit, the surplus is available to the appellant. If, on the other hand, the appeal succeeds, the whole of the deposit remains at the disposal of the depositor and may be attached in the execution of a decree. A similar view was taken in *Jagdish Narain Singh* v. *Mussammat Ramsakal Kuer* (2). In this case, it was held that insolvent's money deposited by him in Court as security for the costs of an appeal to His Majesty in Council, can be attached, but the order of attachment must be made subject to the result of the appeal. These cases fully support the principle propounded in an earlier paragraph of this

(1) A.I.R. (37) 1950 Cal. 174
(2) A.I.R. 1929 Pat. 97

judgment that property in *custodia legis* cannot be attached in the execution of a decree except after the fulfilment of the specific purpose for which property is held.

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For these reasons, I would accept the petition, set aside the orders of the Courts below and direct that as the money which is alleged to have been withdrawn by the landlord was in custodia legis and could not be withdrawn until the specific purpose for which it was deposited had been fulfilled, it should be restored to the Court. The appellant will be entitled to costs here and below.

CIVIL WRIT

Before Kapur, J.

A. S. BHASIN,—*Petitioner*

versus

CUSTODIAN, EVACUEE PROPERTY PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 207 of 1953

1953

Dec. 1st

Administration of Evacuee Property Act (XXXI of 1950) Section 8 (5), 9 and 12—Administration of Evacuee Property Rules—Rule 14 (5)—Powers of Custodian under—Cancellation of leases and allotments—Position of lessee or allottee after cancellation of the lease or allotment—Power of Custodian to take possession of property vested in him where person in possession refuses to surrender possession.

Held, that under section 12 the Custodian has the power to vary or cancel leases and rule 14 (5) gives to the Custodian the power where he is of the opinion that it is necessary or expedient for the proper management of the property to cancel the lease or the allotment, and if the allotment is cancelled the position of the allottee is nothing more than that of a trespasser and under section 8 (5) read with section 9 the Custodian has the power to take possession of the property which is vested in him where any person who is holding it refuses to surrender possession.