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he could attach the property and place it in the hands of a Receiver."

The same view is taken in *Maung San U v. Maung Lu Gale* (5) and *Nandkishore Prasad Singh v. Radhakishun* (6). I, therefore, following these rulings, turn down the recommendation made by the Additional Sessions Judge and dismiss this petition.

K.S.K.

APPELLATE CIVIL

Before S. B. Kapoor and H. R. Sodhi, JJ.

GRAM SABHA AND GRAM PANCHAYAT, BAHU JAMAL PUR, DISTRICT ROHTAK,—Appellants

versus

JOGI RAM AND OTHERS,—Respondents

Execution Second Appeal No. 1414 of 1963

September 23, 1968

Punjab Village Common Lands (Regulation) Act (I of 1954)—S. 3—Shamlat lands vested in the Gram Panchayat under—Whether can be sold or leased out in execution of a money decree—Code of Civil Procedure (Act V of 1908)—S. 51—Temporary alienation by way of lease—Whether can be granted by the executing Court.

Held, that it is not open to an executing Court, in execution of a money decree, to lease out the Panchayat land vested in it under the Punjab Village Common Lands Act. The lands belong to a corporate body which has limited powers of disposition and anything done contrary to the provisions of that Act will be *ultra vires*. The circumstances in which leases can be granted for the benefit of the inhabitants of the village concerned have been enumerated in the rules made under the Act and the executing Court cannot over-ride those

(5) A.I.R. 1938 Ran. 88.

(6) A.I.R. 1943 Patna 124.

provisions. The land vested in the Gram Panchayat against which a money decree is sought to be executed cannot be said to be under the disposing power of the Panchayat within the meaning of section 60 of the Code of Civil Procedure, so as to enable a person holding a money decree against the Panchayat to have the same sold or leased out in execution of his decree,

• (Para 7)

Held, that section 51 of the Code states the various modes of execution of a decree, but it has to be read subject to the conditions and limitations as may be prescribed by the rules. Temporary alienation by way of a lease is not one of the modes of execution of a decree provided in this section. The residuary clause (e) of the section appears to refer to those special methods of execution only which are provided for in certain rules of Order 21 of the Code, as for instance a decree for restitution of conjugal rights or for an injunction under Order 21 rule 32 and such other provisions. Temporary leases are not intended to be given, by an executing Court only in exercise of powers given by section 51 of the Code. (Paras 5 and 6)

Case referred by the Hon'ble Mr. Justice P. D. Sharma on 21st July, 1966, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice S. B. Kapoor and the Hon'ble Mr. Justice H. R. Sodhi on 23rd September, 1968.

Execution Second Appeal from the order of the Court of Shri Kul Bhushan, District Judge, Rohtak, dated 23rd September, 1963, reversing that of Shri M. L. Jain, Senior Sub-Judge, Rohtak, dated 16th November, 1962 (accepting the cross-objections and dismissing the application for execution of the decree in non-satisfaction of the decree) and remanding the case for its disposal in the light of the observation made in the order.

D. C. GUPTA AND S. P. JAIN, ADVOCATES, for the Appellants.

GANGA PARSHAD JAIN, AND G. C. GARG, ADVOCATES, for the Respondents.

JUDGMENT

SODHI, J.—This Execution Second Appeal came up for hearing on 21st July, 1966, before P. D. Sharma, J., who was of the view that the point involved in the present dispute is of public importance and since it is likely to arise in a large number of cases it was more expedient that it be decided by a larger Bench. It is because of this reference that the appeal has now come before us.

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(2) The facts are not in dispute. Jogi Ram and others filed a suit against the Gram Panchayat of village Bahu Jamalpur, Tehsil and District Rohtak, for the grant of a permanent injunction directing the defendant Gram Panchayat to keep the surface of the street in front of the plaintiffs' houses at par with the level of the plaintiffs' other houses and not to lower down this surface. The plaintiffs probably apprehended that they might be deprived of the facility of reaching their houses with convenience and also taking their cattle there. It is not necessary to go into that controversy except to mention that the suit was partly dismissed and some directions were given by the trial Court to the said Gram Panchayat in the matter of raising a pucca embankment. The plaintiffs were not satisfied with these directions and an appeal was preferred before the Senior Subordinate Judge, Rohtak, who partially accepted the same and decreed the suit to the extent of directing the Gram Panchayat to fill up the street marked on the plan up to a certain level. The Gram Panchayat was also to construct after making a pucca embankment of one foot width along with the houses of Godu Ram and Teku Ram, a pucca *nalli* of 1½ feet width on the side of those houses. There were other details also to be complied with by the Gram Panchayat and the five plaintiffs were to contribute Rs. 100 each towards the common fund which was to be raised for this purpose. It was also directed in the decree that in case the Gram Panchayat failed to comply with the same, namely, to fill up the street up to the level mentioned in the decree and to make such a pucca *nalli* and pucca flooring as enjoined therein, the plaintiffs shall be at liberty to make such filling and construct the same at their own expense which they would be entitled to recover from the Gram Panchayat. The decree passed in appeal was confirmed by this Court in second appeal. The record of the execution case is not before us, but it appears that some sort of an execution application was made. The learned counsel for the parties have not been able to state as to whether the executing Court had worked out the amount due to the plaintiffs respondents or not. But be that as it may, the executing Court treated the execution of the decree as if it was a decree for money, probably because some amount was claimed by the plaintiffs decree-holders, who are now the respondents. In execution of this decree, certain land belonging to the Gram Panchayat was got attached to which objections were filed by the latter to the effect that the property was not liable to attachment and sale in execution

of a money decree. On the pleadings of the parties, the following issue was framed—

“Whether the property in dispute is not liable to attachment and sale in satisfaction of a decree.”

The learned Senior Subordinate Judge, who was executing the decree, accepted the objections of the Gram Panchayat (judgment-debtor) and dismissed the application for execution holding that the property sought to be attached having vested in the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, 1954, hereinafter called the Act, was not liable to attachment and sale since the judgment-debtor Panchayat does not have a disposing power over the same. The matter having been taken up in appeal by the decree-holder, the District Judge also came to the conclusion that the Gram Panchayat had not an absolute power of disposition over the Panchayat land vested in it under the Act since it could not dispose of the same without the previous approval of the Government. He, therefore, concurred with the executing Court that such land could not be attached and sold in execution of the money-decree, but relying on some judgment of the Lahore High Court, of which no citation has been given in his judgment, he held that the executing Court could lease out the land in execution of a money decree keeping in view the limitations given in rule 4 of the Punjab Village Common Lands (Regulation) Rules, 1955. It appears that he was referring to the case reported as *Sardarni Datar Kaur v. Ram Rattan and others* (1), which has been cited by the learned counsel for the respondent decree-holder before us. A reference was made by the learned District Judge to section 16 of the Punjab Alienation of Land Act, 1900 (Act 13 of 1900), which has since been repealed. It is in these circumstances that the present execution second appeal was filed by the Gram Panchayat judgment-debtor and the sole question for determination which has been referred to this Bench is whether land which has vested in a Gram Panchayat under the provisions of the Act can be leased out by the executing Court in execution of a money decree.

(3) The contention of Mr. Ganga Parshad Jain, learned counsel for the decree-holder, is that section 51 of the Code of Civil Procedure gives wide powers to an executing Court to execute the decree in any manner as the nature of the relief granted may require and, amongst other things, by attachment and sale or by sale without attachment of any property and since the land sought to be leased

(1) I.L.R. (1920) 1 Lah. 192.

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out belongs to the Panchayat, one of the modes of execution can be by making a temporary alienation thereof by way of a lease as was being done when the Punjab Alienation of Land Act, 1900, was in force. He relied on *Sardarni Datar Kaur's case* in support of his contention. He further contended that sections 9 and 11 of the Act impliedly give a power of disposition by way of sale to the Panchayat.

(4) Mr. Dalip Chand Gupta, learned counsel for the appellant, on the other hand, contended that section 60 of the Code of Civil Procedure was more in point according to the provisions whereof only that property of the judgment-debtor is liable to attachment and sale in execution of a decree which belongs to the judgment-debtor in the sense that he has a disposing power over the same which he can exercise for his own benefit and that the Panchayat has no such power over the land which has vested in it by the operation of the Act. He submits that in execution of the money decree no lease or sale can, therefore, be made of the land so vested.

(5) After giving our careful consideration to the contentions of the learned counsel for both the parties, we are of the view that it is not open to an executing Court, in execution of a money decree, to lease out the Panchayat land vested in it under the Act. The scheme and object of the Punjab Alienation of Land Act were wholly different and it were permanent alienations only by a member of an agricultural tribe in favour of a person who was not such a member that were prohibited. Temporary alienations were permissible. Section 16 of the said Act specifically permitted leases of agricultural land for a period not exceeding twenty years in execution of a decree or order of a civil or revenue Court. Sections 68 and 72 of the Code of Civil Procedure, which now have been omitted by section 7 of the Code of Civil Procedure (Amendment) Act, 1956 (Act 66 of 1956), enabled temporary alienations to be made in execution of a decree under certain circumstances. Section 51 of the Code states the various modes of execution of a decree, but it has to be read subject to the conditions and limitations as may be prescribed by the rules. At any rate, temporary alienation by way of a lease is not one of the modes of execution of a decree provided in this section. The residuary clause (e) of the said section is in the following terms—

“51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

* * * * *

(e) in such other manner as the nature of the relief granted may require:

* * * * *

(6) This residuary clause appears to refer to those special methods of execution only which are provided for in certain rules of Order 21 of the Code, as for instance a decree for restitution of conjugal rights or for an injunction under Order 21, rule 32 and such other provisions. The repeal of sections 68 and 72 of the Code lends support to this view that temporary leases are not intended to be given, as a matter of course, by an executing Court in exercise of powers given by section 51. *Sardarni Datar Kaur's case* relied upon by the learned counsel for the decree-holder had its peculiar facts. It was decided by a Full Bench of the Lahore High Court mainly relying on the provisions of the Punjab Alienation of Land Act, which permitted temporary alienations and also because it was held that section 72 of the Code, since repealed, implied that the Court possessed an authority to make a temporary alienation. There were certain observations in the discussion in interpreting section 51 of the Code, wherein it was said that if a Court possesses the power to transfer the entire bundle of rights constituting ownership, surely it had the lesser power of transferring some of those rights, which included temporary alienation; but the judgment was not based on this reasoning but mainly on the provisions of section 72 of the Code. The argument raised before the Full Bench was that the executing Court alone could not do it and it had to be moved by the Collector if a temporary alienation was to be made and it was in that context that these provisions were examined.

(7) In the instant case, the property belongs to a corporate body which has limited powers of disposition and anything done contrary to the provisions of that Act will be *ultra vires*. The circumstances in which leases can be granted for the benefit of the inhabitants of the village concerned have been enumerated in the rules made under the Act and the executing Court cannot over-ride those provisions. The land vested in the Gram Panchayat and against which a money decree is sought to be executed cannot be said to be under the disposing power of the Panchayat within the meaning of section 60 of the Code of Civil Procedure, so as to enable a person holding a money decree against the Panchayat to have the same sold or leased out in execution of his decree. The Gram Panchayat is only an executive committee of the Sabha which is a corporate body under the Gram Panchayat Act of 1952 and can exercise only those

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powers which it is permitted to do under the statute of its creation. Section 5 of the Act specifically provides that the land vested in a Panchayat under this Act can be utilised or disposed of by the Panchayat only for the benefit of inhabitants of the village concerned in the manner prescribed by the rules. Rule 4 of the old rules of 1955, which stand superseded by the Punjab Village Common Lands (Regulation) Rules, 1964, but on which reliance was placed by the District Judge, no doubt permitted leases of the Shamilat land by auction, but this power of granting leases is circumscribed by several conditions and restrictions, apart from the main condition as given in section 5 that the lease has to be for the benefit of the inhabitants of the village concerned. All those restrictions and conditions need not be recapitulated here, but a perusal of rules 4, 5 and 6 makes it abundantly clear that the executing Court cannot possibly comply with those conditions and supervise the same. Similarly, rule 3 of the new Rules of 1964 does permit leases for cultivation, but again there are several conditions laid down and details to be worked up, from which it is clear that it was not intended that the executing Court should be granting such leases.

(8) The decree-holder is, however, not without a remedy. There is a Sabha fund of each Panchayat and section 80 of the Punjab Gram Panchayat Act, 1952, provides that the same "shall be utilised for carrying out the duties and obligations imposed on the Panchayat or any committee thereof by this or any other enactment and for other purposes of the Panchayat as the State Government may prescribe." When a decree has been passed against the Panchayat, which can sue and be sued in a Court of law, an obligation is imposed on it to obey the decree. In such a case it can be reasonably said that there is an obligation imposed on the Panchayat in terms of section 80 of the said Act and it should be open to the decree-holder to recover the decretal amount of the Sabha fund. This section nowhere limits the duties to be discharged by the Panchayat to those only which are imposed by the Act itself and the language used is of quite a wide amplitude which will include also the obligations imposed by the passing of the decrees against it.

(9) For the foregoing reasons, this appeal is allowed, judgment of the District Judge is reversed and the objections preferred by the Panchayat as against the leasing of its property in execution of the decree of the decree-holder respondent are accepted. There will, however, be no order as to costs in this Court.

S. B. CAPOOR, J.—I agree.

K.S.K.