

Before R. N. Mittal, J.

BALBIR KAUR and others—*Petitioners*

*versus*

DARSHAN SINGH—*Respondent*.

Civil Revision No. 1099 of 1978

September 27, 1978.

*Code of Civil Procedure (V of 1908)—Sections 2(10), (11), 50 and 60(1) proviso, clause (ccc)—Legal representatives of a deceased judgment-debtor—Whether entitled to protection under clause (ccc).*

*Held*, that clause (ccc) of proviso to section 60(1) of the Code of Civil Procedure, 1908 provides that one main residential house and other buildings attached to it belonging to the judgment-debtor other than an agriculturist and occupied by him, shall not be liable to attachment or sale provided the property is not specifically charged with the debt sought to be recovered. From the definition of the term 'judgment-debtor' it is clear that he is a person against whom a decree has been passed or an order capable of execution has been made. It does not include the legal representative of such person, and no inference can be drawn therefrom that 'legal representative' of a deceased judgment-debtor is entitled to the benefits provided in clause (ccc). Section 50 of the Code further provides that if a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the executing Court to execute the decree against the legal representative of the deceased, who shall be liable to the extent of the property of the deceased which has come to their hands. It is evident from the language of the section that the legal representatives are not personally liable to pay the amount of the decree but it is the property of the deceased in their hands from which recovery can be made by the decree-holder. Therefore, the words 'judgment-debtor' in clause (ccc) of proviso to section 60(1) of the Code do not include his legal representatives and consequently the latter are not entitled to the protection of the said clause. (Para 4)

*Petition under section 115 CPC for revision of the Order of Shri Behari Lal, PCS, Sub-Judge, 1st Class, Phillaur, dated 29th May, 1978, dismissing the application.*

M. S. Khaira, Advocate, for the Petitioner.

Nemo, for the respondents.

## JUDGMENT

*R. N. Mittal, J.*

(1) The short question that arises for determination in this revision petition is whether the legal representatives of the deceased judgment-debtor are entitled to the protection given to the judgment-debtor under clause (ccc) of proviso to section 60(1) of the Code of Civil Procedure ?

(2) Briefly the facts are that a decree for the recovery of Rs. 8,100 was obtained by Darshan Singh, decree-holder against Jagir Singh, judgment-debtor. After the decree the judgment-debtor died. The decree-holder filed an execution application in which the house belonging to the judgment-debtor was attached. Smt. Balbir Kaur, Smt. Harbhajan Kaur, daughters, and Kanwaljit Singh, son of the deceased filed an application under section 60 of the Code to the effect that the house sought to be attached was their only residential house which was in their occupation and, therefore, it was not liable to attachment in the execution of the decree. The application was contested by the decree-holder who pleaded that the legal representatives of the deceased were not entitled to the benefit of the provisions contained in clause (ccc) of proviso to section 60(1) of the Code. The learned executing Court dismissed the objections holding that the legal representatives of the judgment-debtor are not entitled to the benefit of the aforesaid section.

(3) The counsel for the petitioners has vehemently urged that the petitioners being the legal representatives of the deceased judgment-debtor are entitled to the benefit of clause (ccc) of proviso to section 60(1). He further submits that they, after the death of the judgment-debtor, inherited the house and are in its occupation. According to him, the house was, therefore, not liable to attachment and sale in execution of the decree.

(4) I have given a thoughtful consideration to the argument of the learned counsel, but regret my inability to accept it. Clause (ccc) of proviso to section 60(1) provides that one main residential house and other buildings attached to it, belonging to the judgment-debtor other than an agriculturist and occupied by him, shall not be liable to attachment or sale provided the property is not specifically charged with the debt sought to be recovered. Section 2(10) and

Balbir Kaur, etc. v. Darshan Singh (R. N. Mittal, J.)

2(11) of the Code define the terms 'judgment-debtor' and 'legal representative'. These are reproduced below:—

“‘Judgment-debtor’ means any person against whom a decree has been passed or an order capable of execution has been made. ‘Legal representative’ means a person, who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

From the 1st definition, it would be seen that judgment-debtor is a person against whom a decree has been passed or an order capable of execution has been made. It does not include the legal representative of such person. No inference can be drawn from these definitions that 'legal representative' of a deceased judgment-debtor is entitled to the benefits provided in clause (ccc). A reading of section 50 further fortifies my view. It provides that if a judgment-debtor dies before the decree has been fully satisfied, the decree-holder may apply to the executing Court to execute the decree against the legal representative of the deceased, who shall be liable to the extent of the property of the deceased which has come to his hands. From the aforesaid language, it is evident that the legal representative is not personally liable to pay the amount of the decree, but it is the property of the deceased in his hands from which recovery can be made by the decree-holder. After taking into consideration the above-said provisions of the Code. I am of the opinion that the words 'judgment-debtor' in clause (ccc) of proviso to section 60(1) of the Code does not include his legal representative and therefore, the legal representative is not entitled to the protection of the said clause. In this view I am fortified by the observations of the Delhi High Court in *Yogesh Sharma and others v. Devi Dayal Jain and others* (1) wherein it is held that the sons, being the legal representatives, are not entitled to the protection of clause (ccc) which extends only to the judgment-debtor and not to his legal representatives. The learned Judge has further observed that the words 'judgment-debtor' as used in clause (ccc) do not include his legal representatives. The contention of Mr. Khaira is, therefore, rejected.

(5) For the reasons recorded above, I dismiss the revision petition with no order as to costs.

N. K. S

(1) 1978 P.L.R. (Delhi) 1.