

**IN THE COURT OF SHRI AMIT MALHAN PCS,
CHIEF JUDICIAL MAGISTRATE, HOSHIARPUR.
(UID NO. PB0250)**

Regn. No. OBJ/1/2018
CNR No. PBHO03-002972-2018
Date of Instt: 27.11.2018
Date of decision: **27.11.2018**

1. Anjali Devi wife of Narinder Kumar resident of village Phadman, P.S. Mehtiana, tehsil and district, Hoshiarpur.
2. Baby Neetu (minor) daughter of Naridner Kumar, through her mother natural guardian and next friend applicant No.1, resident of village Phadman, P.S. Mehtiana, tehsil and district, Hoshiarpur.

... Applicants

Versus

Narinder Kumar son of late Malawa Ram, resident of House No. 612, Mohalla Jaurian, Tehsil Garhshankar, district, Hoshiarpur.

....Respondent

Objections under order 21 Rule 58 CPC read with Section 151 CPC on behalf of Chanchal Devi wife of Shankar Dass for adjudicating the claim of objector over the house, which has been attached in present execution.

Present: Sh. Ajay Chopra, Adv., counsel for the applicants
Sh. V.K. Nanda, Adv., counsel for the respondent
and objector Chanchal Devi.

ORDER.

The objector Chanchal Devi filed the objections under Order 21 Rule 58 CPC submitting that the DH has moved an

application U/s 128 Cr. PC against JD Narinder Kumar and as per the D.H. a sum of ₹ 49,000/- is recoverable from Narinder Kumar. During the proceedings of the above said application the property of objector Chanchal Devi was ordered to be attached. The objector is lawful owner in possession of the house in question, which has been situated with the lal lakir. In the property in question the residential house was constructed by the husband of objector namely Shankar Dass with his own earnings and no other brother or sister of Shankar Dass ever contributed any money at the time of construction of the said house and the same is still in possession of the objector. Sheela Devi, mother-in-law of the objector during her lifetime resided with the objector in the said house and they bore all the expenses of marriages of four daughters of Sheela Devi during her lifetime and they served Sheela Devi. J.D. Narinder Kumar has never resided in the property in question and was separated from the family during the lifetime of Sheela Devi and a property measuring 3 ½ marlas at Garshankar was given to him and in the year 2010 said house was sold by this court in an auction and same was purchased by Jasvir Kaur for ₹ 94,000/-. Now Narinder Kumar has no share in any of the property. The electricity connection is also running in the name of Shankar Dass, husband of the objector since long. The applicants have misled this court

and has got wrongly attached house in question which is the ownership of the objector. Moreover, nobody knows about the whereabouts of said Narinder Kumar for the last seven years. The applicants/decreed holder have not come to the court with clean hands. In the end it is prayed that the objections be accepted and the house under the ownership and possession of the objector be released from attachment.

2. Reply to the objections filed in which the preliminary objections raised that the objections are not maintainable; objector Chanchal Devi has no locus standi to file the objections; the objector is estopped by her own act and conduct from filing the present objections; the objector is neither owner nor in possession of the attached property; the objector has filed the objections just to mislead this court; in previous execution titled as Anjali Devi & others Vs. Narinder Kumar which was dismissed as withdrawn being fully satisfied, this very property was attached by the court and before auction proceedings the brother of the JD on the instruction of the JD has deposited ₹ 94,000/- the arrear of maintenance before the court prior to the auction proceedings so that the auction of the property can be stopped. Only the J.D. is the owner in possession of the attached property and the objector has no connection with the same.

3. On merits, it is submitted that the DH has not moved an application to recover only ₹ 23,000/- as arrear of maintenance against the JD rather has filed two executions against the JD to recover the arrears of maintenance i.e. one execution of ₹ 49,000/- with effect from 15.3.2005 to 15.04.2009 and second execution to recover the arrear of maintenance of ₹ 23,000/- w.e.f. 27.4.2009 to 27.3.2011 total amount of ₹ 72,000/- against the JD. Objector Chanchal Devi has no connection with the attached property, rather Narinder Kumar is the owner in possession of the attached property and at last prayer for dismissal of the objections was made.

4. From the pleadings of the parties the following issues were framed:-

1. Whether the property attached by this court is owned by the objector? OPO
2. Whether it was same property, which was attached in the earlier execution? OPA
3. Whether respondent/JD has no concern with the property? OPO
4. Relief.

5. In order to prove their case applicant Anjali Devi herself appeared as AW1 and tendered her duly sworn affidavit Ex. AW1/A, in which she reiterated the version of her application as

well as the reply of the objections. She also tendered the site plans as Ex. A1 & Ex. A2, certified copy of the report of bailiff dated 20.10.2008 Ex. A3 and certified copy of order dated 10.5.2010 Ex. A4.

6. No other evidence was led by the applicants and the Ld. Counsel for the applicants closed the evidence.

7. On the other hand, objector Chanchal Devi herself appeared as OW1 and tendered her duly sworn affidavit Ex. OW1/A in which she reiterated the version of her objection petition. She also tendered the site plan as Ex. OW1/B, copy of approved site plan Ex. OW1/C, photograph mark OW1/D, original electricity bill Ex. OW1/E, copy of her voter card Ex. OW1/F, copy of her Adhar Card Ex. DW1/G, copy of Adhar Card of Shankar Dass Ex. DW1/H.

8. No other evidence was led by objector Chanchal Devi.

9. After, hearing the Ld. Counsel for the parties and going through the statements of witnesses and documents placed on record, my issuewise findings are as under:-

ISSUES NO. 1, 2 & 3

10. All these issues are taken up together being interconnected for the purpose of decision. The onus to prove issues No. 1 & 3 was upon the objector and the objector was

required to prove that the property attached by the court is owned by the objector and the JD has no concern with the same, whereas the onus to prove issue No. 2 was upon the applicants and the applicants were required to prove that it was the same property, which was attached in the earlier execution.

11. The Ld. Counsel for the applicants has submitted that the maintenance was granted to both the applicants, but the respondent did not make the payment. The applicants furnished the list of property including the house comprised in land measuring 2 kanals 5 marls shown in the site plan, which was attached by the order of the Court, but thereafter the objector filed the objections. It is further submitted that the burden is upon the objector to prove that she is the owner of the attached property and the JD Narinder Kumar is having no concern with the same. It has further submitted that the objector has failed to lead any evidence to prove these issues and requested that the suit property which is attached be sold in execution of the order of maintenance.

12. On the other hand, the Ld. Counsel for the objector has submitted that applicant Anjali Devi has filed the list of property mentioning the land measuring 2 kanal 5 marls being the property of respondent Narinder Kumar, but the above said land belongs to the objector and her husband. Respondent Narinder

Kumar is having no concern with the property. It has further submitted that earlier another property was attached and in an execution the same was sold to Jasbir Kaur. It is further submitted that the property of the objector cannot be attached and cannot be sold in execution proceedings and request for allowing of objection petition is made.

13. I have heard the submissions of both the sides and have gone through the evidence led on record.

14. The present is an application U/s 128 Cr. PC for enforcement of order of maintenance passed in favour of the applicants vide order dated 27.5.1998 which was passed in proceedings U/s 125 Cr. PC. It is not denied fact that the revision was filed against the above said order, but the same was dismissed by the Ld. Additional Sessions Judge, Hoshiarpur vide order dated 20.9.2002. Hence, to enforce that order the applicants filed the present execution for recovery of maintenance amount granted against respondent Narinder Kumar.

15. Before discussing the merits of this case it is also required to mention here that the objections filed by Chanchal Devi were dismissed by the court holding that the same are barred under Rule 58 of Code of Civil Procedure. The objector went into appeal and vide order dated 8.5.2014 passed by the court of Sh. B.S. Deol,

Ld. Addl. District Judge, Hoshiarpur and this court was directed to frame issues and to decide the objections on merits. It is also specifically ordered that to justify the attachment and ownership of the property, the chance be given to the objector to prove that she is being the owner of the attached property. Hence, in compliance of the above said order the issues were framed. The burden was placed upon the objector to prove the objections so taken by her.

16. In order to recover the maintenance amount list of the property furnished by the applicants, upon which the land measuring 2 kanals 5 marlas as shown red in the site plan was attached by the order of the Court. Chanchal Devi filed the objections that her husband being the owner of the property and respondent Narinder Kumar is having no concern with the same. However, the cross-examination of objector Chanchal Devi is important. She in her cross-examination admitted some facts which goes to show that respondent Narinder Kumar is having share in the property so attached by the Court. The objector Chanchal Devi has admitted in her cross-examination that Narinder Kumar is the real brother of her husband. She admitted that Narinder Kumar and her husband are five brothers and also having four sisters. She admitted that earlier land measuring 4 marls was attached by the order of the Court in another execution filed by the applicant Anjali

Devi. She also admitted that in that attachment the property was purchased by Jasbir Kaur and payment of maintenance of ₹ 94,000/- was made to the applicant Anjali Devi. She has also admitted that the house which has been attached is the ownership of her husband Shankar Dass, but she has not brought on record any document to show that she or her husband are the owners of the property attached by the Court as she admitted in her cross-examination that she cannot produce any document like sale deed, fard jamabandi of the land so attached. Volunteered she stated that the property is situated within lal laikr of the village.

17. The objector is also knowing that earlier also another land measuring 4 marls was attached by the court for recovery of maintenance of ₹ 94,000/-. The above said facts were only known to the objector being the close relative of Narinder Kumar, otherwise there is no occasion with the objector to know these facts. The cross-examination of objector further shows that the property which has been attached i.e. 2 kanal 5 marls is within lal laikir i.e. is having no direct document of ownership. She admitted that her husband is also having no document of ownership and is residing there prior to her marriage. Hence, these submissions shows that the land so attached is the joint ownership of respondent Narinder Kumar alongwith other brothers and sisters

and now the objector alongwith her husband are residing there. But it does not mean that the share of respondent Narinder Kumar was extinguished from the land so attached. Hence, Narinder Kumar is also having share in the land so attached and from the cross-examination of the objector it is clear that Narinder Kumar is having 1/9 share in the land so attached.

18. It is admitted fact that in the earlier execution the same land was not attached, rather another land measuring 4 marlas was attached. Moreover, the applicants have not led any evidence to prove the fact that it was the same property which was attached in the earlier execution. Accordingly, issues No. 1 & 3 are decided against the objector and in favour of the applicants, whereas the issue No. 2 is decided against the applicants and in favour of the objector.

RELIEF.

19. Thus, in view of my above discussion, the objection petition of objector fails and the same stands dismissed.

Pronounced in open Court
27.11.2018
Avtar J.W'

(Amit Malhan),
Chief Judicial Magistrate'
Hoshiarpur