

do with this concern. But, in my opinion, these questions do not arise at the present stage. The plaintiff, if so advised, can raise these questions if and when a regular suit is brought against him for the recovery of this amount.

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Learned counsel for the respondent then submitted that the conduct of the plaintiff was such that this discretionary relief should not be granted in his favour. Firstly, it would not be proper to make any comments on the conduct of the plaintiff till he is properly heard in appropriate proceedings because all that happened at Agra was behind his back and secondly when once I come to the conclusion that the provisions of section 47 of the Indian Post Office Act have no application to the facts of this case and that the postal authorities are not authorised by law to use coercive measures for recovering this amount from the plaintiff, then I do not see any reason why I should not grant the injunction prayed for to the plaintiff.

In view of what I have said above, I accept this appeal, set aside the judgment and decree of the lower appellate Court and decree the suit of the plaintiff. But in the peculiar circumstances of this case, I leave the parties to bear their own costs throughout.

B.R.T.

APPELLATE CIVIL.

Before P. C. Pandit, J.

RONAQ MAL,—Appellant.

versus

KASTURI MAL AND ANOTHER,—Respondents.

Execution second Appeal No. 1607 of 1959.

Code of Civil Procedure (Act V of 1908)—Section 60
(1)(ccc)—Objections under—Whether can be raised by

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judgment-debtor after he sold the house to his son and the decree-holder's suit under section 53 of the Transfer of Property Act was decreed—Transfer of Property Act (IV of 1882)—Section 53—Suit under—Effect of.

Held, that a judgment-debtor, who sold his house to his son with a view to save it from attachment after the decree-holder had obtained a decree against him, cannot raise objections to the attachment and sale of that house under section 60(1)(ccc) of the Code of Civil Procedure after the decree-holder had obtained a decree in a suit which he filed under section 53 of the Transfer of Property Act to avoid the sale. The result of the suit under section 53 of the Transfer of Property Act is that the transfer by the judgment-debtor in favour of his son would still be a good and valid transfer so far as both the parties to the transfer are concerned, but it cannot affect the rights of the decree-holder.

Execution second appeal from the order of Shri Chetan Dass Jain, Additional District Judge, Sangrur, dated the 22nd August, 1959, affirming that of Shri Shamshad Ali Khan, Sub-Judge, 1st Class, Sangrur, dated the 30th June, 1956, dismissing the objection petition.

PURAN CHAND, ADVOCATE, for the Appellant.

J. V. GUPTA, ADVOCATE, for the Respondents.

JUDGMENT.

P. C. PANDIT, J.—The judgment-debtor in the present case, who is the appellant before me, filed objections under section 60 (1) (ccc) of the Code of Civil Procedure claiming that the house attached by the decree-holder-respondent was exempt from attachment on the ground that it was his main residential house.

The decree-holder opposed this application and pleaded that the house in dispute was liable to attachment.

The pleadings of the parties gave rise to the following issues:—

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- (1) Whether the judgment-debtor can file objections regarding the house attached when he had sold the same to Joginder Singh ?
- (2) If issue No. 1 is proved, whether the house attached is immune from attachment and sale in execution of the decree against the judgment-debtor?
- (3) Whether the judgment-debtor is entitled to pay the decretal amount in instalments; if so, in what amount?

The executing Court dismissed the objection petition holding that the judgment-debtor had no *locus standi* to file the present objection petition, because he had sold this house to his son Joginder Singh, and that the house in question was not immune from attachment and sale in execution of the decree against the judgment-debtor.

The judgment-debtor went up in appeal against the judgment of the executing Court and the learned Additional District Judge dismissed the same and confirmed the findings of the executing Court.

It appears that after the decree-holder had obtained his decree against the judgment-debtor, the judgment-debtor sold this house to his son with a view to save it from attachment. On this the decree-holder brought a suit under section 53 of the Transfer of Property Act to avoid this sale. This suit was decreed and after that the decree-holder attached the house in question.

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Learned counsel for the appellant submits that the result of the decree-holder's suit under section 53 of the Transfer of Property Act was that the sale of the house that he had made in favour of his son was annulled and the judgment-debtor again became the owner of this house and, therefore, he could file objections under section 60 (1) (ccc) of the Code of Civil Procedure.

According to the Courts below, after the sale of the house in favour of the son, the judgment-debtor had no right, title or interest left in the house and, therefore, he could not file the objection petition under section 60 (1) (ccc) of the Code of Civil Procedure. The effect of the decree under section 53 of the Transfer of Property Act, was that it would enure for the benefit of the decree-holder and not for the benefit of the judgment-debtor himself.

Learned counsel for the appellant relied on a ruling reported as *Dhani Ram v. District Official Receiver, Amritsar* (1), but I find that that was a case in which the suit was brought not under section 53 of the Transfer of Property Act, but it was a case under section 53 of the Provincial Insolvency Act, where the words are different and the transfer in that case was annulled by the Court as provided in section 53 of the Provincial Insolvency Act. In a case, which is governed by section 53 of the Transfer of Property Act, the transfer is not annulled. The result of the suit under section 53 of the Transfer of Property Act is that the transfer would not affect the rights of the creditor, but it remains a good transfer so far as the judgment-debtor is concerned.

In a Full Bench judgment of the Madras High Court, *Chindamabaram Chettiar and others v.*

(1) A. I. R. 1943 Lah. 19 (F. B.).

Sellakumara Goundan and others (2), it was stated as follows:—

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“In a case where a debtor alienates his property under circumstances, which render it voidable by the creditors under section 53, Transfer of Property Act, the alienation is binding on the debtor. If avoided by the creditors, who alone can do so, and there is a surplus, it goes to the vendee. The title to the property continues to be in the vendee subject only to the rights of the creditors.”

As I have already mentioned above, the result of the suit under section 53 of the Transfer of Property Act is that the transfer by the judgment-debtor in favour of his son would still be a good and valid transfer so far as both the parties to the transfer are concerned, but it cannot affect the rights of the decree-holder.

In view of what I have said above, I hold that the judgment-debtor in this case could not file objections under section 60 (1) (ccc) of the Code of Civil Procedure.

In the result, there is no merit in this appeal which is hereby dismissed with costs.

B.R.T.

SUPREME COURT.

Before P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.

SMT. RAJKUMARI KAUSHALYA DEVI,—Appellant.

versus

BAWA PRITAM SINGH AND ANOTHER,—Respondents.

Civil Appeal No.38 of 8960

Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Section 2(6)—Debt—Whether includes liability

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