

IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE: WEST
TIS HAZARI COURTS; DELHI

Execution no. 584/2022

Sh. Dhruv Kapoor

..... Decree holder

Versus

Sh. KaramKambhoj

..... Judgment Debtor.

**ORDER ON THE OBJECTIONS FILED BY SH. MANMEET
SINGH LAMBA AND SMT TARAN PREET KAUR.**

1. Vide this order, I shall decide the objection petition filed Under Section 58 of CPC, on behalf of Sh. Manmeet Singh Lamba and Smt. Taran Preet Kaur against order dated 03.10.2023, passed in execution petition, whereby the property of the JD, bearing no. S-1/20A, Third Floor, Old Mahavir Nagar, New Delhi-18 (*hereinafter to be referred as property in question*), has been attached.

2. It is averred by the objectors that they have purchased the property bearing no. S-1/20A, Mahavir Nagar, New Delhi-110018 from its erstwhile owner and are residing in the said premises and the electricity connection has been taken by the objector no. 1 on 27.02.1998. It is further averred in the objections that the objector no. 1 consists of his wife/objector no. 2, his mother and his children. It is further averred by the objectors that the objector is residing at the first floor of the property in question and after purchasing this property, he is paying house-tax etc.

3. It is further averred by the objectors that they have already purchased the first floor of above-said property from its erstwhile owner and is residing in the premises and having the electricity connection energized on 22.07.2018 and purchased the first floor on 07.12.2017, vide sale deed registered on **29.12.2017**.

4. It is further averred in the objections that the objectors have paid the house-tax in respect of first floor on 22.05.2018 and thereafter, on 08.07.2021, 27.05.2022 and 29.06.2023. It is further averred in the objections that the objectors are the husband-wife and have two children. Besides their children, the mother and father of the objector no. 1 are also residing along with them, however, on 30.06.2021, Sh. Narender Pal Singh/father of objector no. 1 expired.

5. It is further averred by the objectors that they were aware that the third floor of the property has been purchased by Sh. Karambir Kamboj from the earlier owner and there is nothing on this floor or

roof as none had visited this property earlier as the objectors requires the third floor, therefore, they approached Sh. Karmabir Kamboj, who agreed to sell it for a sum of Rs. 43 lakhs through his wife and after executing the attorney in her favour, he sold the third floor of property in question to the objectors.

6. It is further averred by the objectors that Sh. Karambir Kamboj had taken a loan for the third floor of property bearing no S-1/20A, Old Mahavir Nagar, New Delhi-18 from M/s India Bulls Housing Finance Limited and there was a payment of more than Rs. 33 lakhs to India Bulls and this amount was paid by the objector no. 1 through his account and this fact is reflected in the sale deed dated 28.03.2023 and after purchasing the property in question, the possession of the same has been taken from Sh. Karambir Kamboj through his wife Naina Kamboj.

7. It is further averred by the objectors that the said property was also constructed by the erstwhile owners Sh. Gurjeet Singh and Sh. Gurminder Singh, who had built up this property under Saral Scheme in 2016. It is further averred that after getting the permission from the MCD under the Saral Scheme, which has been enacted under the Unified Building Bye Laws, 2016 and paid Rs. 1,83,693/- on 13.07.2016 by seeking Building Permit-P. It is further averred that the plan was got sanctioned from the MCD. It is further averred that the first floor of the property has been sold by these three erstwhile owners to objectors as well as to Sh. Karambir Kamboj.

8. It is further averred that due to the loan taken by Sh. Karmabir Kamboj, the original sale deeds executed in his favour by the erstwhile owners on 25.08.2017, were deposited with India Bulls which were released on 13.03.2023 and the objectors can produce the same as and when called upon the Hon'ble Court.

9. It is further averred that the objectors were surprised when they received a notice affixed for attaching the property in dispute around 06.11.2023 and thereafter, they tried to contact the persons, who affixed notice by the orders of this Court, however, they could not be traced. The objectors approached an advocate, who after making an inquiry apprised them that there is some transactions of loan standing between the DH and the JD and a decree dated 06.10.2022 has been passed and vide order dated 03.10.2023, the court has attached the property in question.

10. It is further averred that the property in question does not belong to Sh. Karambir Kamboj/JD. It is further averred that the objections have been filed for setting aside the order dated 03.10.2023 as well as the attachment notice issued under order 21 rule 54 CPC.

11. The objectors have filed the objection on the following grounds:

- a. The property in question cannot be attached vide order dated 03.10.2023 as the JD has nothing to do with the same.*
- b. The DH, purposely and deliberately, has not disclosed that the property in question has been sold by the JD to the objectors and has committed fraud upon this court as well as on the objectors.*
- c. The provision of Order 21 rule 54 CPC is applicable to those properties which are under the ownership of JD but the property in question has been stood sold on 29.03.2023.*
- d. The objectors are bona fide purchaser of the property in question and the loan of the JD taken on the property in question has been cleared by the objectors.*
- e. The order dated 03.10.2023 against the principle of Natural Justice.*
- f. The order dated 03.10.2023 has been passed without any basis and liable to be set aside.*

12. Reply to the objection petition has been filed on behalf of DH.

13. It is contended by the DH that the sale deed was registered on 13.04.2023 through which the objectors claim themselves to be the owners of third floor of S-1/20A, is in fact null & void. It is further contended by the DH that the property in question has been attached vide warrant of attachment dated 06.04.2023 issued by the SDM, Patel Nagar, in CT case 6045/20, in the matter titled Poonam Syal Vs Karambir Khamboj.

14. It is further contended by the DH that complaint under Section 138 of NI Act for an amount of Rs. 35,00,000/- was filed against the judgment debtor in August, 2020 by Smt Poonam Syal bearing CT cases 6045/2020 and the same is pending before Ld MM, Patiala House Court, Delhi. It is further contended that vide order dated 31.08.2022, the JD has been declared as an absconder and SHO has been directed to take appropriate steps. It is further contended that vide order dated 16.12.2022, the Ld. Court allowed the application filed by the DH, under section 83 CrPC and directed that warrant of attachment to be issued against the absconder/the JD herein.

15. It is further contended by the DH that vide order dated 10.04.2023, as per report of SDM, the immoveable property of JD, stood attached and as per court order, nobody has a right to sell or purchase the property in question.

16. It is further contended by the DH that the property in question has been fraudulently sold by the seller and the said property has

been sold through a power of attorney executed by JD, in favour of his wife. It is further contended that the JD was aware about the pendency of above-said case, proceedings initiated under Section 83 CrPC and notices dated 12.01.2023, 25.02.2023 and 27.03.2023. It is further contended that as per statement dated 21.01.2023 of JD's wife, the JD is the owner of the said property and he is in Dubai and notice dated 27.03.2023 was received by the daughter of the JD. It is further contended that as per report of SDM, the attachment order dated 06.04.2023 was dispatched to all concerned departments, on the same day. Show cause notice was issued to Sub-registrar-II, Janakpuri to explain how the said property could be sold despite warrants of attachment issued on 06.04.2023.

17. It is further contended that objectors admittedly are residing in the property since 1998 and were known to the JD and his wife. It is clear that the objectors and JD have connived and colluded with each other to defraud this Hon'ble Court and deprive the DH. It is further contended that the said property could not have been sold by the JD on 13.04.2023 as the same stood attached on 06.04.2023.

18. Rejoinder has been filed on behalf of the objectors to the reply of the decree holder.

19. Arguments heard. Case file perused.

20. After reserving the case for passing order on the objections, written submissions along with judgments have been filed by Ld

counsel for the DH and Ld counsel for the objectors and which have been duly considered by this court, while passing this order.

21. The case of the objector is that the property in question i.e. bearing no. S-1/20A, Third Floor, Old Mahavir Nagar, New Delhi-110018, has been purchased by objectors from JD through his attorney i.e wife of the JD, on 28/29.03.2023 for sale consideration of Rs. 43 lacs, vide sale deed executed, in favour of objectors, on 28.03.2023 and registered by sub-Registrar on 13.04.2023.

22. It is further argued by Ld counsel for the objectors that the property in question was attached by SDM Patel Nagar on 06.04.2023, whereas the said property was already sold to the objectors on 28.03.2023. So, on 06.04.2023, the property in question was not in the name of JD & cannot be attached.

23. It is further argued by Ld counsel for objectors that the sale deed was executed on 28.03.2023, therefore, sale deed will operate from 28.03.2023, as per Section 47 of the Registration Act. He further argued that on 28.03.2023, the property in question has not been attached, so, sale deed has been validly executed **by the JD** in favour of the objectors on 28.03.2023.

24. It is further argued by Ld counsel for objectors that the proceedings under Cr.P.C. are different from proceedings under

CPC. The purpose of proceedings under CPC and Cr.PC are totally different.

25. It is further argued by Ld counsel for the objectors that the property in question was attached under Section 83 of CrPC by Ld. JFMC, Patiala House Courts, in a complaint case filed under Section 138 NI Act against the JD and objections of the objectors filed under Section 84 CrPC in the said court, are pending for adjudication.

26. It is further argued **by** Ld. counsel for objectors that The Provision of SARFESI Act will apply in the present case as property was mortgaged with India Bulls Housing Finance Ltd. Hence, as per Section 34 & 35 of SARFAESI Act, this court has no jurisdiction to attach the property in question.

27. It is further argued by Ld counsel for the objectors that the objectors are bona fide purchaser of the property in question and they have taken a housing loan from LIC Housing Finance Ltd and they have cleared the loan of JD, which was taken by the JD from M/s Indu Bulls Housing Finance Ltd, by mortgaging the property in question.

28. It is argued by Ld counsel for DH that the sale deed of the property in question has been registered in favour of objectors on 13.04.2023 and the same is null and void as the property in question was already attached by the Ld. MM in complaint case vide order

dated 16.12.2022 and warrants of attachment dated 06.04.2023 were issued by the SDM, Patel Nagar. It is further contended that the order dated 16.12.2022 has never been set aside and has attained finality.

29. Ld. Counsel for the DH further argued that the property in question has been fraudulently sold by the JD through his wife and both had knowledge of the attachment order dated 16.12.2022 and attachment notice dated 06.04.2023. Ld counsel for the DH further argued that JD and his wife were aware of the pendency of present execution as well as initiation of proceedings under Section 83 CrPC against the properties of the JD. Ld counsel for the DH further argued that the JD has accepted notice, which was sent by SDM, Patel Nagar in the process of attaching the property of the JD and the sale of the property in question has been done by the JD just to defraud the DH and to prevent the DH from recovering his decretal amount.

30. Ld counsel for the objectors further argued that the objectors admittedly have been residing in the property since 1998 and were admittedly known to the JD and his wife. It is further argued that it is clear that objectors and the JD have connived and colluded with each other to defraud this Hon'ble Court and deprive the DH from the decretal amount. It is further argued that property in question could not have been sold by the JD on 13.04.2023 as the same stood attached on 16.12.2022 itself. It is further argued that the sale of the property in question, is in violation of orders of the court and

therefore non-est in the eyes of law. It is further argued that it is no more res integra that transfer of immoveable property in violation of an order of injunction or prohibition issued by court of law, confers no right, title or interest in the transferee.

31. Ld counsel for the DH further argued that the Provision of SARFESI Act has not been applicable in the present case as the provision of SARFESI Act has never been invoked by any secure creditor against the property in question.

32. The contention of the objectors that the Provision of SARFESI Act are applicable in the present case and the jurisdiction of this court is barred to attach the property in question is not tenable. No document or order regarding initiation of proceedings under SARFESI Act against the property in question has been filed by the objectors, even no details has been mentioned in the objection petition. Therefore, the said contention of the objectors stands rejected.

33. The contention of the objectors is that the sale shall operate from the date of execution of sale deed i.e. 28.03.2023 and not from the date of registration of sale deed ie. 13.04.2023.

34. **Section 47 of Registration Act states as follows:**

A Registered document shall operate from the time, which it would have commenced to operate,

if no registration thereof had been required or made and not from the time of its registration.

35. Hon'ble Supreme Court of India, in a case title K.J. Nathan Vs Maruthi Rao, AIR 1965, S.C. 430, has held that under the Registration Act, 1908, a registered document operates from the date of its execution and not from the date of its registration.

36. There is no doubt about the settled legal proposition that the sale deed shall operate from the date of execution of sale deed and not from the date of its registration, if the registration of sale deed is valid.

35. It is matter of record that the JD through his wife has sold the property in question to the objectors on 28.03.2023 and its sale

deed has been registered on 13.04.2023.

36. Now, the point for consideration is that whether the sale deed of the property in question, executed by the JD in favour of the objectors is a valid sale deed or it is invalid and is null and void.

37. On 16.12.2022, in the above complaint case, Ld MM issued warrant of attachment against the property of absconder accused Karambir Kambhoj bearing no. 24/29B, Second Floor, Tilak Nagar, New Delhi and the said order is reproduced as under:

*“Compliance report in terms of previous order received wherein it is apprised that efforts are being made to trace the absconder accused. Ld counsel for the complainant has moved an application for passing necessary directions in the present matter. Application perused. Let warrant of attachment be issued against the absconder accused Karambir Kambhoj S/o Sh. Anttu Kambhoj as per the mandate of Section 83 CrPC **qua the property bearing no. 24/29B, Second Floor, Tilak Nagar, New Delhi-110018.** SHO concerned is directed to take appropriate steps for apprehending the absconder accused and execution of warrant of attachment.”*

38. The objectors have purchased property bearing no. S-1/20A, Third floor, Mahavir Nagar, New Delhi, from the JD, whereas as per order dated 16.12.2022, property bearing no. 24/29B, Second Floor, Tilak Nagar, New Delhi-110018. No other order, regarding issuing warrant of attachment against the property in question by Ld MM in above-said complaint case, has been filed on record by the decree holder. So, on the date of registration of sale deed of property in question i.e. 13.04.2023, there was no attachment order qua the said property, passed by Ld MM in complaint case no. 6045/2020. Therefore, the sale deed executed by JD in favour of the objectors of the property in question, cannot be considered invalid on the ground of attachment order against that property, passed by Ld MM, in abovesaid complaint case.

39. As per order dated 31.08.2022, passed by Sh. Udbhav Kumar Jain, Ld MM-04, NI ACT/ RACC/NDD in CC no. 6045-2020 titled as Poonam Syal Vs Karambir Kambhoj, the JD has been declared as an absconder and the said order is reproduced as under:

“ Process server has submitted that despite best efforts, accused Karambir Kamboj could not be found. Separate statement of process server who executed the process u/s 82 Cr. P.C. against accused is recorded whereby I am satisfied that process u/s 82 Cr.PC has been properly executed against the said accused and it appear that either the said accused is absconding or concealing himself. Annexure C in compliance of judgment passed by Hon’ble High Court in Sunil Tyagi Vs. State is taken on record.

Heard. File Perused. Accordingly, accused Karambir Kamboj is hereby declared as an absconder. Let intimation of the order be sent along with copy of this order-sheet to the SHO concerned to bring to his knowledge that the accused has been declared as an absconder today in this case. SHO concerned is a also directed to take appropriate steps in accordance with law and file a compliance report in this regard. Ahlmad to issue the process today itself”.

40. The objectors are admittedly residing at the first floor of the same premises of property in question and they have purchased the said property on 07.12.2017 and got the electricity connection on 27.02.2018 and since then, they have been residing at the first floor. The JD has been declared absconder on 31.08.2022. Before a person as an absconder under Section 82 Cr.P.C., notices are affixed at the residence of JD and Munadi is also carried out in the area of the residence of absconder. As per order dated 31.08.2022, the Ld. MM has mentioned that he is satisfied that process under Section 82 Cr.PC has been properly executed against the accused, who is JD in the present case. Police also used to visit the house of the accused

for the purpose of arresting him, due to issuance of process under Section 82 CrPC and before that warrant of arrest are required to be issued. It is improbable that the objectors were unaware about the abovesaid proceedings against the accused/JD before purchasing the property in question from the JD.

41. Warrant of attachment against the property of the JD were issued by Ld. MM in the abovesaid complaint case on 16.12.2022, though the warrant of attachment was issued against the another property of the JD. The SDM, Patel Nagar has issued notices to the JD, Sh. Karambir Kambhoj through PS Tilak Nagar and one of the notices was received by wife of the JD and she gave her statement dated 21.01.2023 to HC Varun Kumar that she runs her beauty parlour and JD is her husband and the house is their own house. She further stated in her statement that her husband resides in Dubai and she use to talk with him on phone.

42. As per sale deed dated 28.03.2023, the wife of the JD has executed sale deed of the property in question in favour of the objectors, on the basis of GPA executed by her husband in her favour on 03.02.2023. The GPA has been executed by the JD in favour of his wife just after 12-13 days of receiving notices of attachment of property of JD. The abovesaid fact, clearly, depicts that the proceedings for declaring JD as an absconder and the process initiated for attachment of property of JD, were in the knowledge of JD and his wife. In order of evade the due process of law and to save his skin from making payment to DH, the JD

executed GPA in favour of his wife on 03.02.2023 from Dubai and on the basis of said GPA, the wife of JD sold the property in question to the objectors. It will be travesty of Justice, if JD is allowed to evade the process of law by selling his property to objectors despite being declared as an absconder by the Court as well as despite issuance of process of attachment of his property.

43. In a case titled Avon Healthcare Private Limited Vs. Trade International and Others, decided on 19.04.2021, Hon'ble High court of Delhi has held as follows:

Though Section 53 of the Transfer of Property Act provides for institution of a suit by a creditor, to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferer, but as discussed in Rajeew Kumar Batra Vs . Kewal Krishan Kumar 2020 SCC OnLine Del 408 , the enquiry thereunder can be undertaken even in execution proceedings.

44. In a case titled Sameer Bhutani Vs Kewal Krishan Kumar, decided on 15.01.2020, Hon'ble High court of Delhi. **Section 53 of the Transfer of Property Act, 1882, as under:**

"53. Fraudulent transfer--(1) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or

delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

(emphasis added)

8. The Division Bench of the High Court of Madras, in Messrs. Southern Steelmet and Alloys Ltd. Vs. B.M. Steel, Madras 1978 SCC OnLine Mad 28, held (i) that after the amendment of the CPC of the year 1976, there has been a drastic change in the mode of approach and method by which a decision should be arrived at and which should be adopted by a Civil Court when an application under Order XXI Rule 58 of the CPC comes up for adjudication; (ii) that while under the earlier law, such an investigation of claim and objection to attachment of property was summary in nature, the present law provides for a significant departure in the matter of disposal and adjudication of such claims; (iii) that the rule contemplates a full enquiry into all questions including questions relating to rights, title or interest in the property attached, which arose between the parties to the proceeding and mandates that the Court enquiring such a claim petition shall determine such questions; there is also an embargo on the institution of a separate suit for the determination of such questions; (iv) that after the claim or objection has been adjudicated, the order made thereon has the same force and is subject to the same conditions as to appeal or otherwise as if it were a decree; (v) that though perforce an order is contemplated to be passed under Order XXI Rule 58 of the CPC, that order has the legal effect of a decree; (vi) that such an order is a substitute for a decision resulting in a decree in an ordinary litigation; and, (vii) that such being the intendment of the amendment of the year 1976 to Order XXI Rule 58 CPC, the enquiry contemplated under Order XXI Rule 58 of the CPC, is no longer of a summary nature.

9. *In Alamelu Ammal Vs. Chinnaswamy Reddiar* 1988 SCC OnLine Mad 360, it was held that in view of amendment of Order XXI Rule 58, the attaching creditor need not file a separate suit under Section 53 of the Transfer of Property Act to put forth his case that the transfer was in fraud of creditors and the decree holder is entitled to plead so by way of a defence in the claim proceedings.

10. The view of the Division Bench of the High Court of Bombay is found to be the same in *SBI Home Finance Ltd. Vs. Credential Finance Ltd.* AIR 2001 Bom 179. To the same effect are the judgments of the Division Bench of Kerala in *Rajan alias Rajan Gopinathan Vs. Dr. D. Jayashree Nayar* 2009 SCC OnLine Ker 5841 and of the High Court of Karnataka in *S.K. Gangadhara Vs. Ramachandra* 2015 SCC OnLine Kar 8195 and the High Court of Andhra Pradesh in *Ayitam Venkata Anjani Vs. Ganeshula Uma Parvathi* 2015 SCC OnLine Hyd 591.

11. I respectfully concur and do not find any reason to interpret the fourth paragraph of Section 53(1) of the Transfer of Property Act pedantically, by holding that the creditor and which term includes a decree holder, instead of having the questions under Section 53 adjudicated in execution, be relegated to a separate suit.

15. I have considered the contentions. Mulla, in his 12th Edition of Treaties on Transfer of Property Act, in paragraph titled "No Presumption of Fraud" under Section 53, summarised that the burden initially lies on the creditors to make out a case under this section; however when they have proved facts which are sufficient to show *prima facie* that the intention of the debtor was to defeat or delay the creditors, it is for the debtor to meet the case and to explain fully. Here, on the pleadings, the DHs have been able to make out a *prima facie* case under Section 53 of the Transfer of Property Act, of the transfer by the JD of his 1/3rd share in property No.E-201 and E-202, Ramesh Nagar, New Delhi in favour of his son, being fraudulent.

Thus, the objections have to be put to trial and the following issues are framed:

(I) Whether the transfer made by the judgment debtor of his one-third undivided share in the property No.E-201-202, Ramesh Nagar, New Delhi-110015 in favour of his son Divyarth Kumar was with the intent to defeat or delay the creditors of the judgment debtor, including the decree holder? OPDH

(II) Whether the transfer of one-third share aforesaid by judgment debtor to his son Divyarth Kumar is in good faith and for consideration? OP Objector (Divyarth Kumar)

(III) Whether the decree holder is entitled to execute the decree, including from the one-third share of judgment debtor since transferred to his son Divyarth Kumar, in property No.E-201-202, Ramesh Nagar, New Delhi-110015? OPPr.

45. In the abovesaid judgment titled Sameer Bhutani (supra), the JD had sold his one-third undivided share to his son/objector for sale consideration of Rs. 5650000/- and had put the objector in possession of the portion of property, under his occupation and the objector has taken objection that the JD has sold his share to him for sale consideration of Rs. 5650000/- and he is bona fide purchaser of the share of the JD. In the present case also, the objectors are claiming that they have purchased property in question for sale consideration of Rs.43 lacs and has obtained the possession of the property from the JD.

46. In view of the above-said facts and observations, DH has been able to make out a prima facie case under Section 53 of the Transfer of Property Act, regarding transfer of property in question made by JD in faovur of objectors, being fraudulent in nature and has been

made to defraud the DH. Therefore, the objections of the objectors have been put to trial and following issues have been framed.

1. Whether the transfer made by the JD of his property bearing no. S-1/20A, Third Floor, Old Mahavir Nagar, New Delhi-18, in favour of objectors vide sale deed registered on 13.04.2023 was made with the intent to defeat or delay the creditors of JD, including the DH? OPDH.

2. Whether the objectors are bona fide purchaser of the aforesaid property and the transfer of aforesaid property has been made by the JD, in good faith and for consideration to the objectors-Onus of proof upon the objectors.

3. Whether the decree holder is entitled to execute the decree, including from aforesaid property i.e. bearing no. S-1/20A, Third Floor, Old Mahavir Nagar, New Delhi-18, of JD, which has been transferred by the JD to objectors? OPDH.

**Announced in the open court
on 04.12.2024**

(SHIV KUMAR)
District Judge-02, Court no.127,
West Distt, THC:Delhi