

LAW OF EQUALITY PROTECTS RIGHTS OF THE JUDGMENT DEBTOR: A DISCOURSE IN REFERENCE TO ORDER XXI OF THE CODE OF CIVIL PROCEDURE 1908

by

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ABSTRACT

Code of Civil Procedure (hereafter 'CPC') provides provisions for filing of civil suits, interpleader suits and suits of common law remedies like injunction. These remedies are destined to provide efficacious relief to the litigants in conformance to the principles of equity, justice and good conscience. This paper endeavours to decipher the provisions of law on execution in particular reference to the rights of the judgment debtor on sale of movable properties. The paper aims to analyze the text of sub-rule (3) of Rule 77 of Order XXI of CPC to weigh the rights of a judgment debtor and a co-owner in a suit of execution of decree for sale of movable property.

KEY WORDS: Movable property; Rights; Equity; Judgment debtor.

INTRODCUTION:

Code of Civil Procedure (hereafter 'CPC') provides provisions for filing of civil suits, interpleader suits and suits of common law remedies like injunction. These remedies are destined to provide efficacious relief to the litigants in conformance to the principles of equity, justice and good conscience. This paper endeavours to decipher the provisions of law on execution in particular reference to the rights of the judgment debtor on sale of movable properties. The paper aims to analyze the text of sub-rule (3) of Rule 77 of Order XXI of CPC to weigh the rights of a judgment debtor and a co-owner in a suit of execution of decree for sale of movable property.

RIGHTS OF THE JUDGMENT DEBTOR IN SUITS OF EXECUTION:

CPC provides various provisions to protect the equitable rights of the litigants inclusive of rights of the judgment debtor. Rule 43-A of Order XXI of CPC provides that the movable property like live-stock and agricultural implements which cannot be removed conveniently from the land could be left in the custody of any villager or common man in the locality. But

if later on, the custodian did not provide the movable property given in the custody, or if the property produced by the custodian is not in the same condition as it was when it was entrusted to him, “the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or another person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default.”¹ Thus, this provision protects the rights of the judgment-debtor on the property liable to be attached if the same is either lost or “is not in the same condition as it was when it was entrusted to [the custodian]”².

In case of decree for the sale of agricultural produce which requires a considerable time before the crop is likely to be mature enough to be cut or gathered, Rule 45 of Order XXI of CPC provides that the Court has discretion to postpone the execution of the order. This provision protects the rights of the judgment debtor to obtain lawful value from sale of the agricultural crop which is yet to grow to the fruitful levels.³ At the same time, this provision protects environmental produce from deterioration due to the lis of litigants.

Rule 57 of Order XXI of CPC provides that where the Court for any reason dismisses the application for execution of the decree, the order must direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease. Sub-rule (2) of rule 57 of order XXI of CPC further states that, “[i]f the Court omits to give such direction, the attachment shall be deemed to have ceased”.⁴ Sub-rule (2) of rule 57 of order XXI of CPC thus, specifically protects the rights of the judgment debtor in the property which has been attached.

Rule 72 of Order XXI of CPC requires the decree holder to obtain permission of the Court before purchase of the property in public auction in pursuance of the decree of execution. If the decree holder does not so obtain permission, then the Court may order him to fulfill the price of sale differed due to bid made by the decree holder.

¹ Sub-rule (2), paragraph (a) of Rule 43-A of Order XXI of CPC provides provisions on “Custody of movable property”.

² *Id.* in sub-rule (2) of Rule 43-A.

³ Sub-rule (4) of Rule 45 of Order XXI of CPC.

⁴ Rule 57 of Order XXI of CPC: “Determination of attachment.—(1) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease and shall also indicate the period up to which such attachment shall continue or the date on which such attachment shall cease. (2) If the Court omits to give such direction, the attachment shall be deemed to have ceased.”

Similarly, Rule 72-A or order XXI of CPC requires the mortgagee to obtain permission of the Court to bid for or purchase the property sold in execution of a decree on the mortgage. This provision aims to protect the rights of the judgment debtor who is a mortgagor of immovable property so that the mortgagee obtains permission of the Court for purchase of the mortgaged property and does not bid for amount lessor than the amount then due in respect of the mortgaged property.⁵

On sale of agricultural produce, if the fair price, in the estimation of the person holding the sale, i.e. the judgment-debtor, is not offered, then sub-rule (2) of Rule 74 of Order XXI of CPC provides that the judgment –debtor who is the owner of such agricultural produce can require the Court to make the sale on a subsequent market-day.⁶ This provision emphasizes on “fair price” in the sale of immovable property to protect the rights of the judgment debtor to obtain just value of his agricultural produce.

Similarly, rule 83 of Order XXI of CPC specifically grants rights to the judgment debtor to raise the value of his immovable property by mortgage, lease or private sale of such property. This provision therefore confers authority to the Court to postpone the sale of the immovable property if the value of such property can probably be raised in order to protect the interests of the judgment debtor. This is an equitable provision of immense significance which circumscribes the authority of the Court and sheds light on the rights of the judgment debtor against the sale of immovable property in pursuance of the execution of the decree.

Thus, these provisions in Order XXI of CPC aim to protect rights of the judgment debtor even after the orders of execution of decree by the Court of law. These provisions weigh the rights of judgment debtor on equitable principles rather on the touchstone of the merits of the decree. Courts are empowered to grant injunction on ground of irreparable harm to the plaintiff before the lis is adjudged and the same sanctity of justice perforates throughout the litigation process up to the execution of decree.

These provisions reflects the wisdom of legislature where they confer due accord to the rights of the judgment debtor in a spirit of justice. When a statute expressly requires the Court of law to postpone the execution of decree of immovable property in order to ensure that the adequate value of crops are fetched by the judgment debtor or that the crops become mature

⁵ Rule 72-A of Order XXI of CPC:

⁶ Rule 74 of Order XXI of CPC:

enough, the statute enforces ‘livable potential’ of the law and emphasizes that the archaic idiom, ‘Law is blind’ is wrong and such a maxim cannot be made applicable everywhere.

SALE OF MOVABLE PROPERTY BY PUBLIC AUCTION:

Rules 74 to 81 in Order XXI of CPC provide provisions on sale of movable property. Rule 77 of Order XXI of CPC provides sale of movable property by public auction in pursuance of a decree of execution. Rule 77 of Order XXI of CPC is entitled, “sale by public auction”. Sub-rule (3) of Rule 77 of Order XXI of CPC states: “Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owners, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.”

Rule 77 of Order XXI of CPC requires the purchaser of movable property sold in public auction to disburse the price of each lot immediately on the sale of the property and, if they does not do so, the property will become eligible for re-sale. Sub-rule (2) of Rule 77 of Order XXI of CPC further provides that on tender of the sale amount by the purchaser, the sale of such movable property shall become absolute. Sub-rule (3) of Rule 77 of Order XXI of CPC provides that if in a sale of movable property, the judgment debtor and a co-owner or more than one co-owner makes bid of same sum, then the bidding will be deemed to be made by such co-owner. The text of sub-rule (3) in Rule 77 of Order XXI of CPC reads:

“Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner. “

The practical implications of this provision must be analyzed on the basis of following rationales:

1. Constitution of India (hereafter ‘Constitution’) provides ‘Equality before laws’ in Article 14. Article 14 of the Constitution reads: “The State shall not deny to any person equality before the law and the equal protection of the laws within the territory of India.” This provision casts an obligation upon the State to protect the rights of

equality of citizen(s) of India. This is the reason why people resident in North eastern States, women and children have different rights conferred by various provisions of the Constitution of India than ordinary citizens.

2. In *State of Madras v. Champakam Dorairajan*⁷, State of Madras issued a notification for reservation of seats in favour of students on the basis of communal G.O. in the institutions of medical science. Court applied the doctrine of reasonable differentia and rational nexus to find whether the notification issued by the State is justifiable?⁸ Similarly, Supreme Court held the reservation of seats on the basis residence of candidates to be unconstitutional.⁹ Seats were reserved on the rationale that the students who reside in the State of Madras will serve the people of their indigenous State after attaining qualification of medical sciences from the respective institutions, so they must be preferred against the students from other States.¹⁰
3. The Constitution Bench of the Supreme Court in *In re Special Reference Bill 1978*¹¹, formulated some propositions to describe the doctrine of equality in terms of the concepts of intelligible differentia and rational nexus. These propositions become relevant in reference to the difference formulated by the Parliament for the judgment debtor and co-owner to obtain sale amount of their movable properties. Supreme Court observed, “The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.”¹²
4. Judgment debtor and decree holder of immovable properties are the entitle holders of right to possess, enjoy and own the same piece of land in the capacity of coparceners of a joint hindu family¹³. Whether the rights of the judgment debtor is extinguishable

⁷ AIR 1951 SC 226

⁸ <https://indiankanoon.org/doc/149321/>.

⁹ *Dr. Tanvi Behl v Shreya Goel*, 2025 SC, <https://indiankanoon.org/doc/50684603/>.

¹⁰ <https://www.scobserver.in/supreme-court-observer-law-reports-scolr/residence-based-reservation-in-postgraduate-medical-courses-unconstitutional-dr-tanvi-behl-v-shreya-goel-residence-reservation-reasonable-classification/>.

¹¹ AIR 1979 SC 478; (1979) 1 SCC 380.

¹² *Id.* at para 7.

¹³ Section 6, Hindu Succession Act, 1956.

to give preference to the rights of his fellow coparceners just because he is a judgment – debtor and will not be entitled to utilize the sale amount in satisfaction of the decree of immovable property? This is the situation where a provision which confers right upon the judgment debtor seeks to take away the same right on the ground that the judgment debtor is on a different footing and have different entitlements. On the doctrine of harmonious construction, Supreme Court observed, “Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.”¹⁴

5. When two provisions of a statute collide each other, the Courts interpret the provisions to protect the rights of litigants in terms of doctrine of equality. This is the rule of harmonious construction. Now, consider the implications of Sub-rule (3) of rule 77 of Order XXI of CPC in reference to the rights of the judgment debtor. When a co-owner attains the rights to enjoy preferential shares in the coparcenary property, such co-owner will enjoy the possession and ownership of the property to the detriment of the judgment debtor. On the contrary, the judgment debtor is likely to face irreparable loss due to extinguishment of his rights to obtain market value of his property. This is violation of the rights of inheritance and succession provided to the judgment debtor by being a member of the joint Hindu family in case the movable property being sold by public auction is an agricultural produce or a property obtained in joint venture of common pool of resources of joint Hindu family.
6. The maxim “*actus curiae neminem gravabit*” states that the “act of the Court should prejudice no one”.¹⁵ The provisions of rule 77 of Order XXI of CPC becomes contrary to this maxim to the extent they confer preference to the co-owner of movable property in cases of equal bid by a judgment debtor and a co-owner.
7. The maxim, *ubi jus ibi remedium* provides that, “where there is a law, there is a remedy”.¹⁶ The situation created by this provision deprives enforceable rights of the

For a detailed overview of “coparcenership” in Hindu law, see <https://supremetoday.ai/issue/what-is-coparcenary-property-hindu-law>.

¹⁴ CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57, para 20.

¹⁵ This maxim was cited by the High Court of Himachal Pradesh in reference to the scope of a review petition in Chet Ram v. State Of Himachal Pradesh, Civil Review No.7 of 2018.

¹⁶ <https://www.scribd.com/document/346575894/Ubi-Jus-Ibi-Remedium>.

judgment debtor and deprives him to satisfy the decree by virtue of being the 'judgment debtor'.

8. Specific Relief Act 1963 provides provisions for grant of temporary injunction.¹⁷ Temporary injunction can be granted on the grounds of prima facie case, balance of convenience in favour of the plaintiff and the probability of irreparable loss to the plaintiff if injunction is refused. If the co-sharer of property is conferred privilege to sell the property, such sale of property will cause irreparable loss to the judgment debtor whose interests are at stake.

Thus, on the basis of these rationales, the concept of preferential right to sell the property and obtain fruitful shares from the same to the co-sharer of the immovable property in Rule 77 of Order XXI of CPC must be re-analyzed. This provision discriminates the judgment debtor from enforcing his lawful right to obtain shares of movable property which is owned by him for satisfaction of the decree. The provision gives preferential rights to the coparcener, in case of a joint Hindu family, however, such preferential rights cannot deprive the judgment debtor to obtain value of his lawful share for the reason that even a coparcener is not entitled to sale the movable property more than the share to which he is entitled. CPC provides adequate statutory provisions to protect the right of the judgment debtor even in suits of execution of decree. These provisions are common law remedies usually enforceable in equity and remedies of injunction. Thus, an amendment is required in sub-rule (3) of Rule 77 of Order XXI of CPC to protect the rights of judgment debtor.

REFORM OF PROVISIONS OF SUB-RULE (3) OF RULE 77 OF ORDER XXI OF CPC:

In Bihar State Council of Ayurvedic and Unani medicines v. State of Bihar¹⁸, Court observed: "The court must always lean to the interpretation which is a reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration."¹⁹ In Narashimaha Murthy v. Susheelabai²⁰, it was held that:

"The purpose of law is to prevent brooding sense of injustice."²¹ It is not the words of the law but the spirit and eternal sense of it that makes the law meaningful."²² In the case

¹⁷ Section 36 of Specific Relief Act 1963.

¹⁸ AIR 2008 SC 595, <https://indiankanoon.org/doc/245069/>.

¹⁹ *Id.*

²⁰ (1996) 3 SCC 644 (at page 647).

²¹ *Ibid.*

of American Home Products Corporation v. Mac Laboratories Pvt. Ltd. and Another²³, it was held that:

“It is a well-known principle of interpretation of statutes that a construction should not be put upon a statutory provision which would lead to manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly.” Further, in the case of State of Punjab v. Sat Ram Das²⁴, the Punjab High Court held that:

“To avoid absurdity or incongruity, grammatical and ordinary sense of the words can, in certain circumstances, be avoided.”²⁵

In *In re Special Reference Bill 1978*²⁶, Court emphasized on adherence to the classification of persons made by the legislature as just and proper and not to interfere with the same.²⁷ However, in reference to the potential harm foreseeable to a judgment debtor when the bid of the co-owner is preferred to that of the judgment debtor, the question of weighing of the constitutionality of special preference to the co-owner against the judgment debtor comes into light.

In *S. Gopal Reddy v. State of Andhra Pradesh*²⁸, Supreme Court observed:

“It is a well known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a statute. The courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approach for interpreting the Act is necessary.”²⁹

In *CIT v. Hindustan Bulk Carriers*³⁰, Court observed on the construction of provisions of statute and construction of statutory texts:

²² Ibid.

²³ AIR 1986 SC 137 (at page 166, para 66).

²⁴ AIR 1959 Punj. 497.

²⁵ Ibid.

²⁶ AIR 1979 SC 478; (1979) 1 SCC 380.

²⁷ Supreme Court in *In re* case observed: “Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.” *Id.* at para 11.

²⁸ AIR 1996 SC 2184, (1996) 4 SCC 596.

²⁹ <https://indiankanoon.org/doc/1213429/>

³⁰ (2003) 3 SCC 57. These observations have been referred by the Supreme Court in *State of Maharashtra v. Borse Bros. Engineers and Contractors (P) Ltd.*, (2021) 6 SCC 460 at 501.

“A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p. 221.]³¹

A discretion is to be regulated according to known rules of law³² and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet.³³

Thus, the text of sub-rule (3) of Rule 77 of Order XXI of CPC requires to be recapitulated.

REFORM OF RULE 77(3) OF ORDER XXI OF CPC:

In reference to the provisions of CPC on protection of rights of the judgment debtor and to prevent the injustice to the judgment debtor on sale of movable property in public auction, an amendment is required in sub-rule (3) of Rule 77 of Order XXI of CPC. The text of sub-rule (3) of Rule 77 of Order XXI of CPC after amendment must be:

“Where the movable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the ‘**judgment-debtor**’.”

Such an amendment in sub-rule (3) of Rule 77 of Order XXI of CPC will definitely protect the rights of the judgment debtor and prevent injustice due to the bid made by a co-owner of movable property.

CONCLUSION:

The provisions of CPC protect the rights of the judgment debtor and decree holder in conformance of the spirit of justice equity and good conscience. These provisions does not discriminate a judgment debtor even at the stage of execution of decree when the property is

³¹ *Id.* at para 14.

³² P. St. J. Langan, *Maxwell on the Interpretation of Statutes* 105 (12th edn. 1969), Sweet and Maxwell Limited, Great Britain. *Id.* at 148; *Lee v. Bude & Torrington Junction Ry. Co.* (1871) L. R. 6 C.P. 576, per Wiles J. at pp. 580, 581;

³³ *Id.* at 148.

directed by the Court of law for sale by public auction. Sub-rule (3) of Rule 77 of Order XXI of CPC provides preferential right to sale to the co-owner of a movable property in case the bid of judgment debtor and a co-owner is same. This paper infers that any preferential right of sale to a co-owner is palpably against the spirit of justice and causes injustice to the judgment debtor and hence is required to be reformulated. The paper provides an amendment to the text of sub-rule (3) of Rule 77 of Order XXI of CPC in order to ensure adequate protection to the rights of the judgment debtor in consonance with the principles of procedural fairness, reasonableness and equity embodied in our jurisprudence by the statutory laws and the interpretation of Courts of law. A discretion is to be regulated according to known rules of law³⁴ and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet.³⁵

REFERENCES:

BOOKS REFERRED:

1. C.K. Takwani, Civil Procedure with Limitation Act, 1963 (7th edn. 2013 reprint 2014 Eastern Book Company, Lucknow).
2. Prof. T. N. Bhattacharya, *The Interpretation of Statutes* 48 (9th ed. Central Law Agency Prayagraj 2014).
3. P. St. J. Langan, *Maxwell on the Interpretation of Statutes* 105 (12th edn. 1969), Sweet and Maxwell Limited, Great Britain.
4. G.W. Paton, *A Text-Book Of Jurisprudence* 4 (3rd ed. English Language Book Society 1964).

CASES REFERRED:

1. Lee v. Bude & Torrington Junction Ry. Co. (1871) L. R. 6 C.P. 576
2. Maneka Gandhi v. Union of India, AIR 1978 SC .

STATUTES REFERRED:

1. Transfer of Property Act, 1882
2. Indian Contract Act 1872;

³⁴ P. St. J. Langan, *Maxwell on the Interpretation of Statutes* 105 (12th edn. 1969), Sweet and Maxwell Limited, Great Britain. *Id* at 148; Lee v. Bude & Torrington Junction Ry. Co. (1871) L. R. 6 C.P. 576, per Wiles J. at pp. 580, 581;

³⁵ *Id* at 148.

3. Code of Civil Procedure 1908
4. General Clauses Act 1897.

