



ESA-3-2022 (O&M)

ESA-7-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. ESA-3-2022 (O&M)

Rameshwar

..Appellant

Versus

Mahesh Shah and others

..Respondents

2. ESA-7-2022 (O&M)

Tulsi Ram

..Appellant

Versus

Mahesh Shah and others

..Respondents

Date of decision:19.05.2025

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Punchhi, Advocate for the appellant
in both appeals

ANIL KSHETARPAL, J. (Oral)

1. By this order, two Execution Second Appeals i.e ESA-3-2022 and ESA-7-2022 shall stand disposed of.
2. Rameshwar filed a suit for recovery of Rs.58,140/- from Nathu Ram, which was decreed on 04.04.2009. Rameshwar filed the execution petition in which it was disclosed by the plaintiff that the property comprised in Rect.No.29 Khasra no.19/28 (0-4) belongs to the decree-holder. Hence, the warrants of attachment were issued. It was reported that the property is owned by Mahesh Shah. The court



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still proceeded to attach the property and sold the same in court auction. The purchaser filed the objection petition for setting aside the court's sale on the ground of irregularity and fraud. The Executing Court held that the objector may file a separate suit. However, the First Appellate Court came to the conclusion that the property could not be either attached or sold in court auction because it did not belong to Nathu Ram.

3. Learned counsel representing the appellant contends that the property was sold during the pendency of the suit. Hence, the purchaser is governed by rule of lis pendens. Moreover, the objection petition was filed after the prescribed period of limitation.

4. This Court has considered the submissions made by the learned counsel representing the appellant.

5. It is evident that Nathu Ram sold the property to Shashi Bala on 28.04.2006 who in turn sold the property in favour of Mahesh Shah on 13.08.2008. The decree in favour of Rameshwar was a money decree. The property which has been sold in auction was not the suit property. Hence, Section 52 of the Transfer of Property Act, 1882 will not be applicable. Consequently, property could neither be attached nor sold. Additionally, it was reported to the Executing Court that the property is owned by Mahesh Shah when the warrants for attachment were issued. The court did not issue notice to Mahesh Shah.



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6. Keeping in view the aforesaid facts, no ground to interfere is made out.

7. Hence, dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

19.05.2025

rekha

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No