

(1986) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2751 of 1984

Akula Rangappa (Died by L.Rs.) Akula Satyamaiah and Others	APPELLANT
Vs	
Narayana Swamy	RESPONDENT

Date of Decision : 19-02-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3
Succession Act, 1925 — Section 214(1)

Citation : AIR 1988 AP 314

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : T. Bali Reddy, for the Appellant; A. Suryanarayana, for the Respondent

Judgement

1. A. Rangappa obtained a money decree against the respondent and he also filed E.P. No. 50/83 to execute the decree. Pending execution, he died on 13-11-1983 intestate leaving behind him, his son the first petitioner, his widow the 2nd petitioner and three daughters, petitioners Nos. 3 to 5. They filed E.A. No. 461/84 under O. 22, R. 3. C. P.C. to bring them on record as legal representatives, so as to enable them to proceed with the execution of the decree. The court below dismissed the application holding that they did not obtain succession certificate and under S. 214(1)(b) of the Indian, Succession Act, 1925, for short the "Act" placing reliance on a decision reported in S. Rajyalakshmi Vs. S. Sitamahalakshmi, . Hence this revision.

2. Sri Suryanarayana learned counsel for the respondent while supporting the order passed by the court below contends that the respondent is entitled to protect himself from resisting the application in the absence of any succession certificate granted by a competent court declaring the persons to be entitled to the debt in execution. Such succession certificate not having been filed the petitioners are not entitled to come on record. He placed strong reliance on the decision reported in Ganeshmal Vs. Smt. Anand Kanwar and Others, . He seeks

to distinguish the judgment of the Division Bench case reported in Akula Mabukhan Vs. Rajamma and Others, , contending that this court take into account the language of S. 214(1)(b) of the Act and the words "so entitled to" and, therefore all the other courts have fallen in line with the Rajasthan case. Accordingly the ratio of the Division Bench Judgment of the Rajasthan High Court is to be preferred. I am unable to agree. Section 214(1)(a) of the Act is not relevant for the purpose of this case since the suit has already been decreed. The relevant clause is sub. sec. (1)(b) of S. 214 of the Act which postulates thus:

Section 214 :

(1) No court shall -

(2)

(a)xxxxxxx

(b) proceed, upon an application of a person claiming to be so entitled to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of.

(I)& (ii.).....

(I)

(II) a succession certificate granted under part X and having the debt specified therein or

(I)

The rest of the clauses are not necessary hence they are omitted. A reading of this sub-section should postulate that a person who claims that he is entitled to execute the decree from a debtor, the court shall not execute the decree unless the person claiming produce a succession certificate enjoined under this provision. The question is whether a decree holder on this filing an execution application, but before full satisfaction is recorded, dies intestate, whether his legal representatives are entitled to come on record to proceed with the execution? Order XXII, R. 3, C. P.C. postulates that "where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiff alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. Therefore, when cause of action for execution of the decree survives one of the legal representatives or all the legal representatives of the deceased may be made a party and the execution proceedings shall be proceeded with. The question is whether a succession certificate as enjoined in S. 214(1)(b) of the Act is necessary for continuation of these execution proceedings. This question squarely has arisen in the case in Mabhkuan v. Rajamma (supra) A Division Bench of this court speaking through Sri Chandra Reddy Chief Justice (as he then was) has considered the effect of the provisions

and held, thus:

"it is manifest from the language of S. 214(1)(b) then it is only an application, for execution filed by a person that comes within the prohibition enacted in S. 214(1)(b). Could it be predicated that a person, who seeks to come on record as the legal representative of a decree-holder for the purpose of continuing that application, has applied for execution of the decree"". In our opinion, the answer is in the negative. It looks to us that this clause contemplates initiation of execution proceedings by a person and not continuance of proceedings already started by decree-holder."

While so laying down this court was not inclined to follow a contra view laid in *Raghubir Narain Singh Vs. Raj Rajeshwari Prasad Singh and Others*, *Kshetra Mohan v. Azizullah Mea*. AIR 1920 Cal 580, *Thomas Chacko v. K. Varghese* AIR 1956 TC. 183 ; Subsequently when the legal representatives of the deceased decree-holder seeks to execute the decree without obtaining a succession certificate under S. 214(1)(b) filed an execution petition the question that arose was whether the execution petition can be proceeded with, - without obtaining a succession certificate. This court in the decision reported in *S. Rajyalakshmi Vs. S. Sitamahalakshmi*, held that obtaining a succession certificate is a mandatory. In the decision reported in *P. Baburao v. Tikkamchand*, (1983) 1 APLJ 163 the question arose was that the decree-holder filed an execution petition. The execution petition was closed for want of bidders. Subsequently he died. Then the legal representatives filed an application to revise the closed execution petition. The question that arose was whether they can file the application without obtaining succession certificate as required under S. 214(1)(b) of the " Act. My learned brother T. Lakshminarayana Reddy J. held that when once the execution petition is closed for want of bidders, it cannot be revived and a fresh application has to be filed. If a fresh application has to be filed then it is necessary that the legal representatives should obtain the succession certificate as enjoined under S. 214(1)(b) of the Act. The golden rule that runs through the decisions of this Court are thus:

(1) Where a decree-holder himself files an execution application and he dies before executing the decree and recording the full satisfaction the legal representatives are entitled to continue the execution without obtaining a succession certificate as required under S. 214(1)(b) of the Act.

(2) Where the legal representatives themselves are seeking to execute the decree obtained by the deceased decree-holder, then it is mandatory under S. 214(1)(b) of the Act to obtain a succession certificate and then to have the decree executed.

3. Therefore, there is no controversy, or conflict with regard to the rule laid down by this court. No doubt the Division Bench of the Rajasthan High Court relied on by the learned counsel for the respondent appears to have taken a different view following the line of decisions which this Court has dissented in *Akula Mabukhan*

Vs. Rajamma and Others, Mabukhan's decision was not cited before the bench of Rajasthan High Court "herein the learned Judges appears to have laid stress on the ground "entitled to claim" and the learned Judges have put that unless he entitlement is determined in the proceedings under S. 214 of the Succession Act the debtor would be needlessly put to successive harassment by persons claiming the to execute the debt, the subject matter of the decree in execution. In my view the line of approach may not be necessary for the following reasons. Under O. 22. R. 3 or 4 , P.C. the legal representatives or representative is/are entitled to represent the estate of the deceased. What is sought to be executed is the decree obtained by the deceased decree-holder. However, if one or two of them are claiming title to the decree, it is open to them to come on record and contested execution proceedings already initiated by the deceased decree-holder. On executing a decree the liability of the Judgment-debtor is wiped out and he is discharged of the liability due under the decree. If any person claiming any amount out of the proceeds of the decree it is open to them to agitate their rights elsewhere. But as against the Judgment-debtor the debt is wiped out and he is no longer answerable to the debt to any other person claiming to be the legal representative. The Division Bench in "Mabukhan's case(supra) has rightly considered that when execution was already initiated by the decree-holder and he dies, pending realisation of the debt and his legal representative or legal representatives can come on record, they would pursue the execution proceedings from that stage. Considered from this perspective I express my inability to subscribe to the view expressed by the Division Bench of Rajasthan High Court and other High Courts. The need to obtain succession certificate arises only when there are rival claims among the legal representatives and for the first time, after the demise of the decree-holder, an independent application for execution was laid. Moreover I am bound by the ratio of the Division Bench Judges and I do not find any ground to doubt the correctness of the Division Bench Judgment. Accordingly the Civil Revision Petition is allowed and the L.R. petition is ordered, but in the circumstances without costs.

Revision allowed.