(1959) 09 KL CK 0013

In the High Court Of Kerala

Case No : A.S. No. 400 of 1957

Ananthan Pillai — APPELLANT

Vs

Krishna Iyer and Others
 Vs Ananthan Pillai — RESPONDENT

Date of Decision : 01-09-1959

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 13

Citation : AIR 1960 Ker 222 : (1959) 3 KLJ 1072

Hon'ble Judges : K. Sankaran, C.J;Anna Chandy, J

Bench : Division Bench

Advocate : M. Madhavan Nair, S. Bhoothalinga Iyer, K. Sivasankara Panicker, P.K. Kunhalu, K. Rama Iyer and S. Ananthasubramania Iyer, for the Appellant;

Final Decision : Allowed

Judgement

Sankaran, C.J.—This is an appeal by the 8th defendant, whose tarwad had conducted a chitty. The present suit is an administration suit for collecting the assets of the chitty and for paying the several creditors of the chitty. A preliminary decree has also been passed and a Receiver appointed to take the necessary steps for collecting the assets and distributing the same. When the properties of the 8th defendant''s tarwad were attempted to be sold in execution of the decree, the 8th defendant objected. He also filed an application under Act III of 1956 for permission to pay the debts in instalments under the provisions of that Act. Some of the counter-petitioners objected to the granting of the prayer of the 8th defendant. The main controversy was on the question as to how many of the claims against the foreman had become barred by limitation. According to the 8th defendant, the claims of the plaintiffs and also of defendants 42 and 44 were alone subsisting, while the claims of all the other creditors had become barred by limitation even before the date of the preliminary decree.

The lower court took the view that after the Institution of the suit, the law of limitation will not operate as against any such claim and accordingly held that the claims of the several creditors have not become barred. This view is not correct. The mere institution of an administration suit will not have the effect of suspending the law of limitation so far as the creditors are concerned. It is only with the passing of the preliminary decree that the court takes charge of the chitty assets and proceeds to administer the same for the benefit of the creditors. After the date of the preliminary decree, the affairs of the chitty assets are in the hands of the court and hence the claims of the creditors will not be barred by the operation of the law of limitation. Prior to that date, those claims may get time-barred. The question whether the claims of the creditors in this case had thus become time-barred, before the date of the preliminary decree, has not been investigated. It has to be investigated and such of the claims which were alive up to the date of the preliminary decree have to be entertained and provision made for satisfaction of those claims. For this purpose the case has to be sent back to the lower court,

2. The view taken by the lower court that the foreman had no right to pay off any of the chitty debts out of court, does not also appear to be correct. The administration suit does not bar the foreman from dealing with his creditors. It there has been an honest and real adjustment and satisfaction of any of the claims, the same could be recognised in the administration of the estate. The 8th defendant has a case that the amount of the claim still to he paid is comparatively small and that he is prepared to pay off the same. This question will arise only after ascertaining the extent of the several claims outstanding without becoming barred before the date of the preliminary decree. Thus an investigation into that matter is of paramount importance.

3. In the result, this appeal is allowed and the order of the lower court is set aside. The case is sent back to the lower court for fresh disposal in accordance with law and in the light of the observations made above. We make no order for the costs of this appeal.