
(2007) 10 AP CK 0029
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6447 of 2003

Bandaru Srinivassa Rao

APPELLANT

Vs

Sreyobhilashi Chit Funds and Others

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 50(2)

Citation : AIR 2008 AP 97 : (2008) 1 ALD 392

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Mummaneni Srinivasa Rao, for the Appellant;

Judgement

G. Yethirajulu, J.—This Civil Revision Petition has been filed by the fourth judgment debtor/revision petitioner, who is the legal representative of the third Judgment debtor, In E.P. No. 707 of 2002 in O.S. No. 563 of 1996 on the file of the Principal Junior Civil Judge, Khammam.

2. The decree holder obtained a decree against the judgment debtors 1 to 3 during his lifetime. After obtaining the decree, the third judgment debtor by name Bandari Harinadha Bhaskar Rao died and therefore, his son was brought on record as legal representative. The execution petition was filed for attachment of the salary of the fourth Judgment debtor, who is legal representative of the third judgment debtor. The trial Court ordered attachment of the salary of the fourth judgment debtor holding that since the fourth Judgment debtor inherited the job of his father on compassionate grounds, it was treated as the property of his father, Therefore, the property is liable for attachment.

3. In this connection, the learned Counsel for the revision petitioner/fourth Judgment debtor submitted that Section 50(2) C.P.C. speaks about the liability of the legal representatives of the deceased and the liability is on the fourth judgment debtor, when he inherits any property from the deceased and as the fourth judgment debtor did not inherit any property and on account of the death

of his father, he got the appointment on compassionate grounds. Therefore, it cannot be said that it is the property inherited from his father and hence, the attachment of the salary cannot be ordered against the fourth judgment debtor:

4. Section 50(2) of C.P.C. reads as follows:

50. Legal representative.-(1) ...

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of, and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Clause (2) of Section 50(2) of C.P.C. makes it very clear that the legal representative is liable only to the extent of the property of the deceased, which has come to his hands and there is a duty cast on the Court to examine whether the fourth Judgment debtor inherited any property or whether the property of the deceased is in the hands of the legal representative and then only pass appropriate orders for attachment.

5. In the present case, the trial Court extracting the contentions raised by both parties allowed the application by finding that except denying that he did not succeed to the estate of his father, the fourth respondent has not put forth any evidence. Thus, in view of Section 50(2) of C.P.C., the fourth respondent is liable to pay the amount to the extent of the property of the deceased-third judgment debtor. When the attachment of the salary of the legal representative is sought for, the initial burden is on the decree holder to prove that he inherited to any property of his father. In the absence of that, the attachment cannot be ordered and therefore, I am inclined to set aside.

6. Accordingly, the Civil Revision Petition is allowed and the order dated 16-9-2003 in E.P. No. 707 of 2002 in O.S. No. 563 of 1996 is set aside. However, the decree holder is at liberty to file another E.P. If there is sufficient material to show that the fourth judgment debtor inherited the property of his father.