

(1982) 10 AP CK 0017

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5779 of 1978

Duggirala Balarama Krishnayya

APPELLANT

Vs

Arokapudi Jagannadha Rao

RESPONDENT

Date of Decision : 26-10-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)

Contract Act, 1872 — Section 23

Evidence Act, 1872 — Section 115

Citation : AIR 1983 AP 136 : (1983) 1 APLJ 255

Hon'ble Judges : P.A. Choudary, J;Kodandaramayya, J

Bench : Division Bench

Advocate : Y.V. Narayan, for the Appellant; T. Dasaratharamayya, for the Respondent

Judgement

Kodanadaramayya, J.—This revision petition was referred to division bench by a single judge as it raised a legal question of substantial importance. The facts are not in controversy and they may be stated as follows:-

The respondent obtained a money decree against the revision petitioner on the basis of a pronote in O.S. No. 75 of 1969 on the file of the principal District Munsif, gudivada. The decreeholder filed E.P. No. 100/71 and the Judgment-debtor after making certain payments filed the present application out of which the above civil revision petition arose claiming exemption of his house from attachment. The courts below held that the revision petitioner is an agriculturist and the residential house is exempted from attachment but held that he waived the objection as to the non-availability of the house from attachment within the meaning of S. 60(1) proviso (c) of civil P.c. The said view of the courts below was canvassed by the revision petitioner.

2. The learned single Judge refered the above revision tot he Bench in view of hte Judgment of the Supreme Court in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, which held that the provisions of S. 60(1) (g) and (k),

C.P.C relating to exemptions of stipends, gratuities and compulsory deposits under provident funds Act from attachment based on public policy, makes reconsideration of the judgment of this Court in K. Santha Kumari Vs. Suseela Devi, necessary.

3. It is necessary to state at the outset that S. 60 C.P.C is amended by the amending Act 104 of 1976 enlarging S. 60(1) proviso (c) exempting the houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist or a labourer or a domestic servant and occupied by him. The new definition enlarged the applicability of the said provision to labourers and domestic servants also. Sub-sec. (1-A) was added to S. 60 C.P.C stating that "Notwithstanding anything contained in any other law for the time being in force an agreement by which a person agrees to waive the benefit of any exemptions under this section shall be void". If this amendment governs the present case the petitioner is entitled to succeed as the courts below having held that the house is exempt from attachment overruling the objection on the ground that the petitioner waived his right under this S. 60(1) proviso (c), C.P.C Now as per the new amendment the plea of waiver is no longer permissible and such agreement to waive the benefit of an exemption under this section shall be void. This reference is made before amendment and our decision governs only cases prior to the amending Act as the amendment made to section 60 was not given retrospective effect specifically as per S. 97 (2) (g) of the Amending Act stating that the provisions of S. 60 of the principal Act as amended by S. 23 of the Amending Act shall not apply to any attachment made before the commencement of the said S. 23 hence our decision governs only the case that arose prior to the Amending Act, 1976.

4. The main contention of the respondent is that a division Bench of this Court in K. Santha Kumari Vs. Suseela Devi, held that S. 60(1) proviso (c). C.P.C though exempts from the attachment the houses or other buildings of agriculturists, the said right can be waived by him as the provision contained therein is not based on public policy.

5. The judgment of the Division Bench in Santakumari v. Suseeladevi, (supra) is a case where the house belonging to an agriculturist was sought to be sold in execution after obtaining a decree on the basis of a mortgage of that house made by the agriculturist. Hence that is a case where the agriculturist voluntarily executed a mortgage and made the house as security for the debt and the creditor decree-holder executed the decree on forcing the security. The present case is a case of money decree where the property was brought to sale for realising the money decree. A clear distinction was drawn by decided cases that the proviso (c) to S. 60(1) does not apply to mortgage decree for more than one reason. (1) in the case of a mortgage decree, there is no need for attachment. (2) S. 60(1) proviso (c), C.P.C does not prohibit the sale or mortgage of properties by the agriculturist. (3) the agriculturist must be deemed to have

waived his right the moment he executed the mortgage thereby agreeing to the sale of the property in execution of a decree which has eventually to be passed in the suit to be filed by the mortgagee. This view was taken correctly in Kochumariam Vs. Kishema Vilasam Co., . No doubt in the Bench judgment in K. Santha Kumari Vs. Suseela Devi, it was observed the plea of exemption under S. 60(1) proviso (c) C.P.C is not based upon public policy and hence it can be waived. Once the question of attachment and the consequent sale is not required (sic) in the mortgage decrees, the observation of the learned Judges that the exemption granted under S. 60(1) proviso (c), C.P.C is not based upon public policy can be taken only as an obiter. Further the Supreme Court in Shrimant Appasaheb Tuljaram Desai and Others Vs. Bhalchandra Vithalrao Thube, had an occasion to consider this provision and held: the object of the exemption in Cl. (C) apparently is that an agriculturist should not be left without a roof over his head. In other words the legislature intended by Cls. (B) and (c) to prevent an agriculturist becoming destitute and homeless". In a country like ours which is largely based on agricultural economy it is necessary to afford this protection to agriculturists in order that agricultural operations may be continued to be carried on by them at the place where they reside and it cannot be denied that interruption of agricultural operations is against national interest since it may lead to fall in agricultural production. Hence undoubtedly this provision is based upon public policy. This principle was clearly enunciated in a recent judgment in Gowranna and Another Vs. Basavana Gowd, . In Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, their Lordships of the Supreme Court held that the provision relating to the exemption of stipends and gratuities allowed to pensioners u/s 60(1)(g) and compulsory deposits under provident Funds Act under proviso (k) of the said provision are based upon public policy and cannot be waived by the persons for whose benefit those provisions are intended.

6. No doubt in respect of this provision relating to residential houses of the agriculturists there were some conflicting authorities by various High Court and hence the amendment was made which was referred earlier by introducing sub-sec. (1-A) stating that any agreement to waive the rights under this section shall be void. The said provision was introduced as per the advice of the 54th Law commission report on the CPC at page 50. The commission observe: "Waiver of the right conferred by section 60 should in our view, be made in operative. On this point, we are departing from the approach adopted in the earlier report". The present amendment is clearly clarificatory in nature. But for the provisions of S. 76 we should have interpreted the said provision as having retrospective effect. Instead of that we are constrained to hold on the strength of the judgment of this Court and other High Court that the waiver in respect of this clause is opposed to (public) policy. It is settled law that if the waiver of this provision is opposed to public policy the waiver cannot be given effect to. To our mind when Cls. (G) and (k) are based on public policy it is difficult to hold that Cl. (C) has no public policy to serve and hence it can be waived when in particular Cl. (C) is enlarged to include labourers and domestic servants.

7. The learned counsel for the respondent contended that the division Bench judgment in K. Santha Kumari Vs. Suseela Devi, is binding on us and it can be overruled only by a larger Full Bench. We have already expressed the view that the said judgment is distinguishable as that is a case where a decree was obtained on the foot of a mortgage for which no attachment is necessary before sale. Fourteenth Edition of Mulla's civil P.c. at page 404 on the strength of the judgments of number of other High Court states that "If a house occupied by an agriculturist is specifically mortgaged, it is not protected from sale in execution of a decree upon the mortgage. Cl. (C) does not prohibit the sale of property specifically mortgaged cl. (C) does not prohibit the sale of property specifically mortgaged though it may be occupied by an agriculturist as such unless he is prohibited by law from mortgaging or selling it". (See the cases cited therein of the High Court).

8. Even before the Judgment of the High Court in Union of India (UOI) Vs. Jyoti Chit Fund and Finance and Others, there are instances where high courts took the view that attachment in respect of the property covered by this clause and other clauses are opposed to public policy and hence cannot be waived. In post master General , Bombay, v. Chenmal, AIR 1941 Bom 389 and in M. and S.M. Rly. Vs. Rupchand Jitaji and Others, it was held that the attachment of salaries of Judgment-debtor is opposed to public policy. In Ganpatrao v. A. V. Zinzare, AIR 1948 Nag 392 it was held that the right under S. 60(1) proviso (c), C.P.C can be waived. In Bala Prasad Matani Vs. Ajodhya Prasad and Another, it was held that section 60(1) proviso (n), C.P.C relating to future maintenance can be waived. The same High Court took the view that in respect of a residential house of an agriculturist, the right can be waived the same High Court took the view the in respect of a residential house of an agriculturist, the right can be waived, in Ganga Bishun Ram Gajadhar Ram Vs. Jagmohan Ram, . It was held in Sita Ram v. Physal Singh AIR 1937 Lah 939 that the right to exemption relating to the house of the agriculturist under cl (c) can be waived similarly in Rajindra Kumar v. Central Government AIR 1944 Lah 168 it was held that the salary protected u/s 60(1) proviso (I) C.P.C can be objected by garnishee though the judgment-debtor consented. But the same High Court held in Rajinder Kumar v. Chetanlal, AIR 1940 Lah 65 that the judgment-debtor can waive attachment of salary. In Mahadeo Agrahri Vs. Dhaunkal Mal, When the judgment-debtor agreed for consent decree to pay in instalments when the house was attached it was held that he is bound by the consent decree and waiver operation. But however in Ram Naresh and Another Vs. Ganesh Mistri, it was held that in view of the subsequent local amendment inserting Explanation 1-A to S. 60 C.P.C such consent would not confer jurisdiction on the Court. In Harnam Singh v. Ramji Das. AIR 1951 P&H 225 it was held that pensions granted u/s 60(1) proviso (g) cannot be waived. In Sardarsingh v. Bhanwar Singh ILR 1975 MP 919 it was held that the attachment of salary under S. 60(1) proviso (I) is opposed to public policy. In Uzir Biswas v. Haradeb Das. AIR 1920 Cal 424 Where a compromise decree was passed creating charge on the dwelling house of the agriculturist it

was held, he cannot subsequently question the same as it constitutes waiver. In *subramaniam v. Satyanadham* AIR 1942 Mad 391 it was held that salary under S. 60(1) proviso (I) cannot be waived on the ground of public policy. In *Matam Basayya Vs. Hanumantha Reddi and Another*, a Division Bench held that though the Court has no jurisdiction to attach and sell the property of an agriculturist the claim u/s 60(1) proviso (c), C.P.C can be waived as the Judgment-debtor did not object when property was brought to sale and after the property was sold he cannot attach the sale on that ground. Similarly, the madras High Court in *Chedalavada Venkayya and Another Vs. Payidi Tatayya*, also took the view that the exemption under S. 60(1) proviso 9c), C.P.C can be waived. In *Madras and southern The Madras and Southern Maharattah Railway Vs. Chengali Sydalli and Another*, it was held that the exemption for the provident Fund covered u/s 60(1) proviso (k) cannot be waived. We have already noticed that the karnataka High Court took the view that the protection given to the agriculturist under Cl. (C) cannot be waived.

9. The cleavage of judicial decisions was noticed by mulla 14th Edition vol. I page 412 and it was observed that this conflict of judicial decisions has been resolved in favour of the view that waiver of such right is not legal and valid by introducing sub-sec. (1A).

10. An agreement which tends to be injurious to the public or against the public good is void as being contrary to the public policy. (Vide *halsbury's laws of England*, Third Edition, P. 130 and *Gherulal Parakh Vs. Mahadeodas Maiya and Others*, .

11. The protection given to the agriculturist of his residential house is based upon high public policy of the state, as any interruption of agricultural operations is against the national interests and it may lead to a fall in agricultural production. Such policy of the state cannot be defeated and any waiver of of such a right is opposed to public policy. Hence we hold that hte protection under S. 60(1) proviso (c) cannot be waived.

12. In the result. We are of the opinion that the application filed by the judgment-debtor in E.A No. 198/1975 must be allowed and the orders of the courts below are set aside and accordingly we allow the civil revision petition and we make no order as to costs.

13. Petition allowed.