(1959) 09 OHC CK 0008

In the Orissa High Court

Case No : O.J.C. No''s. 106 and 107 of 1958

Fakiri Dibya APPELLANT

Vs

Iswar Prasad Das and Others RESPONDENT

Date of Decision : 21-09-1959

Acts Referred:
Orissa Estates Abolition Act, 1951 — Section 18(1), 5

Citation : (1960) 26 CLT 30

Hon'ble Judges : Narasdlhau, C.J;Barman, J

Bench : Division Bench

Advocate : R.N. Misra, for the Appellant; B.K. Pal, Opp. Parties 1 to 3 and A.G., for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—The Petitioner in these two O.J. Cs., one Fakiri Dibya, had obtained a decree for maintenance against opposite parties 4 and 5 in the Court of the 2nd Additional Subordinate Judge of Cuttack in O.S. No. 18/21-(11) and in that decree the maintenance was made charge on certain touzis of the opposite party. These touzis were taken over by the State of Orissa under the provisions of the Orissa Estates Abolition Act. The Petitioner then filed a Claim Case before the claims Officer under Clause (2) of Sub-section (1) of Section 18 of the said Act alleging that she was a creditor whose debt was made a charge on the estate that was taken over. Clause (c) of Sub-section (1) of Section 18 admittedly did not apply to the present case inasmuch as the touzis do not form part of an impartible estate. The claims Officer admitted her claim but on appeal, the learned District Judge held the claim to be maintainable only in respect of arrear maintenance due to the Petitioner till the date of vesting of the touzis in the State Government. But as regards future maintenance he observed that she was not a ''creditor'' within the meaning of the said clause nor was the amount due to her a ''debt''. Hence he disallowed that claim.

2. The main point for decision in these two applications therefore is whether

future maintenance payable to the Petitioner after the date of vesting, would be a ''debt'' within the meaning of Clause (a) of Sub-section (1) of Section 18 of the Orissa Estates Abolition Act. This question was considered in Haridas Acharjya Choudhury v. Kishore Acharjya Choudhury ILR Cal 38 where it was held that a sum of money which mayor may not become payable at some further time and the payment of which depends on contingencies which may or may not happen, will not be a ''debt''. To a similar effect is the decision of the Madras High Court reported in Nanammal v. Collector of Trichinopoly 5 I.C. 879 where it was held that a decree for future maintenance cannot be attached nor can it be treated as a money decree against the judgment-debtor. These two decisions have been followed in the later Madras decision reported in Mamad v. Valie Appa AIR 1917 Mad 79; where it was held that a right to future maintenance is not liable to attachment and sale in execution of a decree. Doubtless the quantum of maintenance has been definitely ascertained and incorporated in the decree. But the Petitioner''s claim to further maintenance depends on her being alive up to the date for which the maintenance is claimed. Though death is certainty for all human beings the date of death is most uncertain and hence when the money due to the Petitioner is payable in future on the contingency of her being alive it cannot be said that such a liability is a "debt" within the meaning of Clause (a) of Sub-section (1) of Section 18 of the Act. Sri R.N. Misra, on behalf of the Petitioners also quite properly conceded that Clause (a) of Sub-section (1) of Section 18 may not apply to the present case.

3. But he urged that there may no other remedy left open to the Petitioner to execute her decree inasmuch as under Clause (e) of Section 5 of the Act the institution of any suit in the Civil Court is forbidden, for realization of any money due from an intermediary the payment of which is made a charge on the Estate. That clause further says that "all suits, executions and other proceedings in respect of the mortgage or charge which may be pending on the date of vesting shall be dropped". The learned Advocate General appearing for the State of Orissa observed that the bar under the aforesaid clause may not apply in respect of claims which arise after the date of the vesting inasmuch as, on a correct interpretation of that clause the money must be due from the Intermediary when he was an Intermediary. After the date of vesting he ceases to be an Intermediary and his relationship with the decree holder will be like that of any ordinary judgment-debtor. We do not wish to say anything at this stage as to whether it will be open to the Petitioner apply to the Executing Court for executing the decree for maintenance in respect of the arrears that may be due to her, from the date of vesting till the date of her application for execution. It is always open to the Petitioner to make such an application and it will then be left to the Executing Court to decide, after hearing both parties, whether Clause (e) of Section 5 of the Act would operate as a bar to the continuance of the execution proceeding. The final order of the Executing Court will doubtless be subject to appeals and revisions under the Code of Civil Procedure.

4. But we are not satisfied with the contention of the Petitioner that he has no

alternative remedy in the Civil Court. These two applications are therefore dismissed, but there will be no order for costs.

Barman, J.

5. I agree.

6. Applications dismissed.

