
(2002) 07 AP CK 0122
In the Andhra Pradesh High Court
Case No : Appeal No. 49 of 1987

Godavarthi Veeralakshmi and Others	APPELLANT
Vs	
Sangi Ramaraju and Co.	RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2003) 1 BC 552

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : C.C.S. Sastry, for the Appellant; Ramachandra Raju, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Defendants in O.S. No. 73 of 1983 on the file of the Court of the Subordinate Judge, Bhimavaram are the appellants.

2. Respondent filed the suit against the appellants for recovery of Rs. 24,824/- being the principal and interest due on the promissory note dated 14.10.1983 for Rs. 20,000/- executed by G. Suryanarayana, husband of first appellant and father of appellants 2 to 4, alleging that the aforesaid Suryanarayana after having borrowed Rs. 20,000/- from it executed a promissory note in its favour agreeing to repay the principal with interest at 24% per annum, but failed to pay the amount due under the promissory note in spite of repeated demands and died leaving behind the appellants as his heirs and that in spite of repeated demands and registered notice through a lawyer also, appellants also failed to pay the amount due under the promissory note executed by Suryanarayana. First appellant filed her written statement, which was adopted by respondents 2 to 4. The averments, in brief, in the written statement of 1st appellant are, respondent is put to proof that it is a firm registered under the provisions of Indian Partnership Act and is entitled to sue on the promissory note and has to prove that her husband Suryanarayana after borrowing Rs. 20,000/- from the

respondent, executed the promissory note dated 14.10.1983, and since her husband Suryanarayana executed a gift deed in respect of his entire property creating a life estate in her favour with vested remainder in respondents 2 to 4 neither she nor respondents 2 to 4 are liable to pay the amount claimed in the suit because her husband Suryanarayana did not leave behind any property or assets.

3. On the basis of the above pleadings, the Trial Court framed as many as 5 issues for trial. In support of its case respondent examined three witnesses as P.Ws. 1 to 3 and marked Exs.A1 to A6. On behalf of appellants, only first appellant examined herself as D.W. 1 and marked Exs. B1 to B4. The learned Trial Judge held that the respondent is a firm registered under the provisions of Indian Partnership Act and that the suit promissory note is true, valid and is supported by consideration and the debt was contracted by Suryanarayana for legal necessity and for the benefit of the family and hence is binding on appellants and that an extent of 73 cents in R.S. No. 95/2 was left behind by Suryanarayana and that property came into the hands of the appellants and passed a decree in favour of the respondent and ordered that respondent with a direction to it to realize the decretal amount from 73 cents in R.S. No. 95/2 left behind by Suryanarayana.

4. The main contention of the leaned Counsel for the appellants is that the question as to whether the deceased-borrower left behind any assets need not be determined at the time of passing decree because the decree, in case a suit is filed against the legal representatives of a deceased debtor, has to be passed against the estate of the deceased in the hands of his legal representatives, and so the Court below directing recovery of the decretal amount from 73 cents in R.S. No. 95/2 allegedly left behind by Suryanarayana is not sustainable. He also questioned the finding of the Trial Court on the issue relating to the truth and genuineness of the suit promissory note and registration of respondent No. 1 - firm. The contention of the learned Counsel for the respondent is that in the petition filed by the respondents seeking attachment before judgment of the properties of Suryanarayana in the hands of the appellants, both sides adduced evidence, and the Trial Court after considering the evidence adduced by the parties, only held that the appellants are in possession of 73 cents in R.S. No. 95/2, left behind by Suryanarayana and passed a decree in favour of the respondent and so there are no grounds to interfere with the judgment and decree under appeal. He placed strong reliance on Madivallappa Irbhadrappa Vs. Mallappa Somappa, , and Thanu Pillai and Another Vs. Nellathayammal and Others, .

5. The evidence of P.W. 1 shows that he is the Managing Partner of the respondent firm. Ex. A6 certificate of registration issued by the Registrar of Firms shows that respondent is a firm registered under the provisions of the Partnership Act. Since the first appellant as D.W. 1 did not dispute the fact that P.W. 1 is the Managing Partner of the respondent firm and since Ex. A6 shows

respondent is a firm registered under the provisions of the Partnership Act, there are no grounds to interfere with the finding on issue No. 1 recorded by the Trial Court.

6. The evidence of P.Ws. 2 and 3 read with PW1 establishes that Suryanarayana executed Ex. A1 suit promissory note. Respondent got issued the original of Ex. A2 notice to the appellants demanding payment of the amount covered by Ex. A1 promissory note. Though appellants received the said notice, as seen from Exs. A3 to A5, they did not even send a reply" to the said notice. There is nothing in the evidence of the first appellant as DW 1 to doubt the genuineness of Ex. A1 and passing of consideration thereunder. Therefore, the finding of the Trial Court that Suryanarayana executed Ex. A1 promissory note and that it is supported by consideration, and so respondent is entitled to file the suit against the appellants, who are his legal representatives needs no interference.

7. It is well-known that in a suit for recovery of money against the legal representatives of a deceased debtor, question if any assets are left behind by the deceased-borrower or not need not be gone into and decided by the Court while passing a decree. High Court of Allahabad in *Sumeshar Bind v. Baldeo Sahu*, AIR 1935 Alla 390, which is a suit by a creditor against the heirs of the deceased debtor, held that the creditor is entitled to a decree on proof of the debt irrespective of the fact whether the deceased-debtor left behind any property or not, and if the deceased debtor did not leave behind any property the decree remains unexecutable and the question whether the heirs of the deceased debtor came into possession of any of the assets of the deceased debtor has to be determined at the time of execution, and not in the suit except when the suit is based on the allegation that the defendants are in possession of the assets. In *Tamiz Bano Vs. Nand Kishore and Another*, and *Shankarlal v. Ganesh Singh* AIR 1926 Nag 170, it is held that plaintiff in a suit for recovery of the amount filed against the legal representatives of a deceased debtor need not prove that the assets of the deceased debtor came into possession of his legal representatives against whom he filed the suit. Therefore, it is really not necessary to go into the question whether the assets left behind by Suryanarayana came into possession of the appellants because no personal decree is sought, or would be passed against them and the decree would be against the assets of Suryanarayana in the hands of the appellants.

8. At the time of filing of the suit respondent got attachment before judgment some of the properties in possession of the appellants. In that petition appellants filed a counter alleging that Suryanarayana has nothing to do with attached properties and that they do not belong to him. So the question as to whether the properties got attached before judgment belonged to Suryanarayana or not should have been decided in the petition for attachment before judgment, and not in the suit. But, for the reasons best known to the appellants, they thought fit to adduce evidence with regard to the assets left behind by Suryanarayana in the suit itself, and basing on the evidence adduced by the appellants, the learned

Trial Judge came to a conclusion that an extent of 73 cents in R.S. No. 95/2 is not covered by Ex. A2 and is the separate and self-acquired property of Suryanarayana. Appellants after taking stand and adducing evidence in their attempt to show that Suryanarayana did not leave behind any assets, cannot turn round now and say that the Court below was in error in giving a finding on the question of the assets left behind by Suryanarayana in the suit. In fact the question as to what are the assets left behind by Suryanarayana has to be decided at the time of execution because some of his other assets could be in possession of the appellants, apart from the land of 73 cents in S. No. 95/2 got attached before judgment. Appellants, who adduced evidence with regard to the assets left behind by Suryanarayana, cannot be heard to say that the finding of the Court below recorded as per the evidence on record that 73 cents in S. No. 95/2 was the property of Suryanarayana and that property came into the hands of appellants as his legal representatives, should have relegated the enquiry to the stage of execution of the decree.

9. Therefore, I find no grounds to interfere with the judgment and decree of the Trial Court and so the appeal is dismissed. No costs.