

(1988) 07 KAR CK 0005
In the Karnataka High Court
Case No : C.R.P. No. 1975 of 1988

Gouri		APPELLANT
	Vs	
N.K.D.P.S.T.C.C.S. Ltd.		RESPONDENT

Date of Decision : 28-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60, 60 (1) (c)
Karnataka Land Reforms Act, 1961 — Section 2 A (10), 2 A (11), 2 A (3), 34, 44 (2)

Citation : (1989) ILR (Kar) 1045 : (1988) 3 KarLJ 352

Hon'ble Judges : Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : V.P. Kulkarni, for the Appellant; Ravi G. Sabhahit, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Chandrakantaraj Urs, J.—This revision petition Is by the legal representative of Judgment-debtor No. 2 in Execution Case No. 5 of 1975 on the file of the Civil Judge at Karwar. The decree-holder is the North Kanara District Primary School Teachers Co-operative Credit Society Limited.

2. By I.A.5, the decree-holder Co-operative Society sought the execution of the award passed in ABN No. 131 of 1969 dated 26-9-1970 passed by the Deputy Registrar of Co-operative Societies, Karwar, who also Issued a certificate that the said decree had not been satisfied. The decree-holder sought attachment of properties of Judgment-debtor No. 2, which consisted of a house and certain agricultural lands in respect of which occupancy rights had been conferred on the deceased husband of the present revision petitioner.

3. Objections were raised- by the Judgment-debtors on the ground that the attachment could not be made as the properties in question were tenancy properties and also Joint family properties. But the Civil Judge, who at that time heard the objections, over-ruled the same and proceeded to attach the said properties. The Judgment-debtors, aggrieved by that order, questioned the

correctness of that order in Civil Revision Petition 1581 of 1986 in this Court. This Court allowed the revision and remanded the matter for fresh consideration of the objections filed by the Judgment-debtors. Therefore, the Civil Judge on enquiry held that the lands In question were mulgeni lands and therefore attracted Section 34 of the Land Reforms Act and as such he directed deletion of those lands from the properties that were to be attached in the execution petition.

4. Against that order, the Judgment-debtors preferred once again Civil Revision Petition 2117 of 1987. But that petition came to be dismissed on 1-6-1987. However, while the mulgeni lands were deleted, the attachment in respect of the house properties that stood in the name of Judgment-debtors 1 and 2 were sought to be attached and sold. In the meanwhile Judgment-debtor No. 2 expired. Therefore, the present revision petitioner was brought on record as his legal representative, being his wife. She again filed objections; inter-alia contending that no survey number of land was mentioned and that the house property was situated In Survey No. 1454/4 of Gokarn Village in Kumta Taluk; It was a tenanted land and the said land vested in the Government since 1974 and some other persons have been declared as occupants of the land and Judgment-debtor No. 2 has no right, title and interest in those properties and the Court had already held that the lands could not be put to auction and therefore, the suit house also should go along with the land, as it was attached to the earth and barred u/s 44(2) of the Land Reforms Act.

5. On such objections an enquiry was held and It revealed that the house in question was indeed used for agricultural purposes but was converted for residential use subsequently. In the result, the executing Court came to the conclusion that the house being a residential house was liable for attachment and sale. Therefore, I.A.5 came to be rejected as not tenable.

6. In this Court, it is pointed out by Sri Kulkarni, learned Counsel for the revision petitioner that whatever may be the position, after conferment of occupancy rights In favour of the Judgment-debtors, the fact nevertheless remained that the Court below overlooked specific provision contained in clause (c) of proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure, which In express terms prohibited the attachment of 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 them. The thrust of the argument Is that the Judgment-debtor particularly the revision petitioner Is an agriculturist and the house In which they lived is a house occupied and situated on agricultural land or a portion thereof and therefore, not liable for attachment.

7. Section 60 of the CPC provides for the properties, which are liable for attachment and sale In execution of a decree. Proviso Is the exception and clause (c) of the proviso in unambiguous language protects the properties of agriculturist, a labourer or a domestic servant. "Agriculturist" Is not a term

defined under the Code of Civil Procedure. Therefore, we have to look for the meaning of that expression as normally understood in common parlance.

8. The Concise Oxford Dictionary, (Vth Edition 1964) defines "agriculturist" at page 26 under the term "agriculture" as follows;

"Cultivation of the soil. Hence agricultural, agriculturist."

In other words the meaning to be attached to the term "agriculturist" is the person who cultivates the soil. The term has been legally defined under the Karnataka Land Reforms Act under clause (3) of Section 2(A) to mean a person who cultivates land personally. In Clause (10) of Section 2(A) "to cultivate" with its grammatical variations and cognate expressions means to till or husband the land for the purpose of raising or improving agricultural produce whether by manual labour or by means of cattle or machinery, or to carry on any agricultural operation thereon; and the expression "uncultivated" shall be construed correspondingly. The explanation to the said clause (1) may not be relevant for our purpose. Similarly Sub-section (11) of Section 2(A) defined "to cultivate personally" to mean to cultivate land on one's own account or by one's own labour, or by the labour of any member of one's family or by hired labour or by servants on wages payable in cash or kind, but not in crop share, under the personal supervision of oneself or by member of one's family.

9. That the Judgment-debtor were occupants of the land as mulgeni tenants and were cultivating the same came to be established and accepted by the Court earlier when the first of the revision petition was allowed and the Civil Judge, Karwar, was directed to consider the objections of the Judgment-debtors. Once the Court accepted them as cultivators of the land and excluded the mulgeni land, it was not open to the same Court to hold that the house which was originally used for agricultural purposes had ceased to be the house of an agriculturist in terms of clause (c) to the proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure. This aspect has completely escaped the notice of the learned Civil Judge while disposing of I.A.5. If that statutory bar exists, even after the occupancy rights were conferred, the bar for attachment continued to be operative under the CPC in the manner stated above.

10. However, the learned Counsel for the respondent decree-holder - the Co-operative Society drew my attention to the decision of this Court in *BAB1 D'SOUZA v. SYNDICATE BANK*. In the said case this Court has clearly held that while the question of tenancy is pending before the Land Tribunal, or in other words has not reached finality under the Land Reforms Act, the interest the tenant has in obtaining the occupancy rights, in terms of Section 44(2)(d) of the Land Reforms Act, cannot be brought to sale as the land continues to vest free of all encumbrances in the State. From the same proposition, it has been held as a necessary corollary that once the land has been granted to the occupant and he becomes the owner thereof, there is divesting of the land from the Government and therefore it is liable for attachment in the hands of the owner of the land.

But that decision though considered clause (c) of proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure, proceeded on the basis that the Judgment-debtor therein was not an agriculturist because he derived income from other sources.

11. With the utmost respect I must differ from that conclusion because nowhere in the CPC or any other agrarian law Is there scope for construing that an agriculturist ceases to be an agriculturist if he has Income from other sources than agriculture. No such Inference may be drawn, particularly having regard to the width or greater dimension of given to the expression "to cultivate personally" in he premier agrarian law, Land Reforms Act. If for purposes of that Act an agriculturist is one who gets the land cultivated personally or on supervision would clearly Include the revision petitioner though a lady, widow of second Judgment-debtor, even if she does not plough the land personally if she supervises the cultivation by her hired labourers, she would still be an agriculturist. This aspect has also escaped the notice of the learned Civil Judge.

12. In any event, in Babi D'Souza's case aforementioned, this Court proceeded on the assumption that the Judgment-debtor therein was a driver and therefore not an agriculturist. In that view of the matter, the decision relied upon for the respondent - Co-operative Society Is not really of any assistance to overcome the bar created by clause (c) of proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure, which in clear terms provides the house occupied or lived in by the Judgment-debtor if he Is an agriculturist, is not liable for attachment and sale just as that protection is extended to an agricultural labourer or a domestic servant.

13. For the above reasons, the revision petition succeeds and the order made by the Civil Judge in Execution No. 5 of 1975 is set aside and I.A.5 is allowed to the extent indicated and the house situate in Survey No. 1454/4 of Gokarn Village of Kumta taluk Is not liable for attachment in view of clause (c) to proviso to subsection (1) of Section 60 of the Code of Civil Procedure.

14. Order accordingly.