

(1959) 09 MAD CK 0015

In the Madras High Court

Case No : Civil Reven. Petition No. 421 of 1959

Janakiammal (deceased by L.R. Ramaswami Goundar (died)
by widow Rajammal

APPELLANT

Vs

A.T. Krishnaswami Mudaliar and Others

RESPONDENT

Date of Decision : 05-09-1959

Acts Referred:

Citation : AIR 1960 Mad 324

Hon'ble Judges : Ganapatia Pillai, J

Bench : Single Bench

Judgement

(1) This revision petition is preferred by the seventh respondent in E. P. No. 134 of 1957 in O. S. No. 226 of 1946, on the file of the Second

Additional Subordinate Judge, Coimbatore. That petition was filed by the defendants in O. S. No. 226 of 1946 under the following circumstances.

O. S. No. 226 of 1946 was laid against the defendants by the two persons for recovery of a sum of more than one lakh of rupees. They got a

decree in the first Court not for the full sum claimed, but, for a part of it. Against the decree, an appeal was preferred to this Court, being A. S.

No. 713 of 1947. That appeal was preferred by the judgment-debtors defendants objecting to the decree passed by the Subordinate Judge of

Coimbatore.

The plaintiffs in the lower court also preferred an appeal to this Court objecting to the disallowance of a portion of the claim. Pending the appeal,

an order for stay was obtained in this Court on condition that the amount of the decree should be deposited in the trial court, and the decree-

holders should take it out on giving security. The decree amount was accordingly deposited in the trial court, and security was given in the shape of

a bond by two persons, husband and wife, one of whose legal representatives is the present petitioner. That bond was in form No. 3, Appendix G

first schedule of the Civil Procedure Code.

(2) The appeal to the High Court preferred by the defendants succeeded, while the other appeal failed, with the result, the decree-holders, who

had withdrawn the amount deposited in the first Court, had to redeposit the amount with interest. They failed to do so. An execution petition by

way of restitution was filed by the defendants, and arrest of one of the plaintiffs was prayed for. He was not available, and the execution petition

was dismissed.

(3) Subsequently, the present execution application was filed for bringing to sale the properties hypothecated under the security bond given to

Court. Two objections were raised to execution. The first was that the bond did not contain personal liability, and could not be enforced under S.

145 or 151 of the Civil Procedure Code. The second objection was that without exhausting the remedies open against the principals the security

bond could not be enforced. Both the objections were overruled by the Subordinate Judge and execution was ordered. That order is questioned in

this revision petition.

(4) The learned counsel for the petitioner raised two points. The first is that the bond is assignable, and the Subordinate Judge should have

assigned the bond to the decree-holder herein and should not have allowed the execution to proceed by bringing the hypothecated properties to

sale in this proceeding. For contending that the bond is assignable, he referred to the decision of Pulavarti Satyam Vs. Kunchibhotla Satyanarayana

and Another, . That was a case where the bond was given under O. XXXII, R. 6. It was addressed to the Additional District Munsif, though the

same of the officer was not given. The learned Judge held that the bond was assignable, though it was not executed to the officer by name. The

facts here are entirely different.

The form of the bond which follows form No. 3 Appendix G first schedule to the Civil Procedure Code, does not mention whether it is executed in

favour of any particular officer or court. The learned counsel brought to my notice the decision of the Privy Council in Raj Raghubar Singh v. Jai

Indra Bahadur Singh 38 Mad LJ 302 : AIR 1919 PC 55, where their Lordships of

the Privy Council had occasion to note this form. I am not sure whether the form referred to in the judgment of the Privy Council is identical with the form which we have now in form No. 3 Appendix G first Schedule to the Civil Procedure Code. Whatever it is, from the mere fact that at the top of the bond we find words ""to the Subordinate Judge, Coimbatore"" it cannot be said that the bond was executed in favour of a person. The recitals in the bond amply make it clear that no question of the bond being addressed to any person arises. The recitals show the liability undertaken by the obligor, and how that liability should be discharged. I do not, therefore, agree that the bond in this case is addressed to a particular person either by designation or by name. It follows this bond was not assignable, and as was laid down by the Privy Council in AIR 1943 189 (Privy Council) in such a case the party should not be left without a remedy. Even if S. 145 C.P.C. will not apply, the court has ample jurisdiction in its inherent power to enforce the bond by way of execution in the same proceedings to realise the money.

(5) The next point raised by the learned counsel is that this bond does not provide for any personal liability. On a reading of the bond, I find provision is made in it for payment of the balance that would remain due after the sale of the hypothecated properties, by the obligor. That certainly is an obligation undertaken personally by the persons who gave the bond. The fact that in certain contingencies that liability may not be enforced, is beside the point. The short question is whether the bond provides for personal liability. The answer must be ""yes: "" because if the hypotheca is found to be insufficient personal liability to pay the balance is written into the security bond. That would be sufficient to bring the bond within the ambit of S. 145, Civil Procedure Code. The learned Judge in the court below was therefore right in enforcing this bond by bringing to sale the hypothecated properties in proceedings in execution without driving the parties to a separate suit. The revision petition is dismissed with costs.

(6) Revision petition dismissed.