
(1987) 09 MAD CK 0046
In the Madras High Court
Case No : C.R.P. 1021 of 1985

Krisknaswami Naicker

APPELLANT

Vs

Vasudevan and others

RESPONDENT

Date of Decision : 11-09-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 16
Partnership Act, 1932 — Section 19, 19(2)(c)

Citation : (1987) 09 MAD CK 0046

Hon'ble Judges : Sivasubramaniam, J

Bench : Single Bench

Advocate : R. Alagar, for the Appellant; E. Padmanabhan, for the Respondent

Judgement

Sivasubramaniam, J.—This revision is directed against the order passed in E.P. 192 of 1984 in O.S. 229 of 1981 on the file of the Principal District Munsif, Sathur. The facts leading to the filing of the present revision petition are as follows :-- One Messrs. Uma Paper Mart, the second respondent herein filed a suit in O.S. 151 of 1979 on the file of the Sub Court, Ramanathapuram, against the revision petitioner and respondents 3 to 5 herein as partners of the third respondent firm for recovery of a sum of Rs. 7,778.64, due from the said firm and the said suit, after transfer to the District Munsif, Sattur in O.S. 229 of 1981 was decreed on 28th June, 1983. Originally, the decree holder filed E.P. 224 of 1983 against the fourth respondent for sale of his properties. During the pendency of the said petition, the decree was assigned in favour of one Vasudevan, who is the first respondent herein. Thereafter, that execution petition was not pressed and the present execution petition in E.P. 192 of 1984 was filed for recognition of the said assignment and arrest of the revision petitioner. The petitioner resisted the application on the ground that the other partners, finding that they cannot escape liability, had persuaded the decree-holder to assign the decree in favour of the first respondent who is their cousin and nominee so that the decree-holder would not proceed against them but only against the petitioner herein. It is claimed that the consideration for the assignment was paid only by

them and not by the said assignee and that the assignment is a benami transaction for the benefit of the other judgment-debtors. It was further contended that execution ought to have been levied only against the firm at the first instance and not against a single partner. The assignment was also challenged on the ground that all the partners of the decree holder firm have not joined in the assignment, and, therefore, the assignment is invalid. After considering the objections raised by the petitioner herein, the learned District Munsif held that the said assignment is valid and ordered arrest. Aggrieved against the said order, the petitioners have filed the above revision petition.

2. Mr. R. Alagar, learned counsel appearing for the petitioner, submits that the assignment in favour of the first respondent herein is only benami for the benefit of the other judgment-debtors brought about to defeat the rights of the revision petitioner who is one of the judgment-debtors, it is submitted that as per the provisions contained in the proviso to R. 16 of O. 21, C.P.C., where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others. I do not find any force in the said arguments, since there is no scope to introduce the theory of benami in the case of a transfer of a decree where it has been established that the first respondent has paid the amount and got the assignment from the decree-holder.

3. Learned counsel for the petitioner raised serious objection to the assignment of the decree on the ground that the decree is in favour of the firm Uma Paper Mart, and, therefore, the said decree cannot be assigned in favour of the first respondent, for the amount lesser than the actual amount due under the decree. According to him, the claim in E.P. 224 of 1983 was Rs. 9,826.78 whereas the decree was assigned only for a sum of Rs. 8,000 by one S.P. Ramanathan, one of the partners of the decree-holder firm. He contends that this amounts to settlement or compromise of the decree in favour of the firm and one of the partners cannot or enter into such an arrangement as he has no authority to do so under law. He relies on the provision contained in S. 19(2) (c) of the Indian Partnership Act which reads as follows:

In the absence of any usage or custom or trade to the contrary, the implied authority of a partner does not empower him to... (c) compromise or relinquish any claim or portion of a claim by the firm.

S. 19 of the Act enumerates acts in respect of which a partner has no implied authority to bind his co-partners while purporting to act on behalf of the firm without their express authority or usage or custom of trade empowering him to bind his co-partners by acts specified in sub-S. (2) of S. 19 of the Act. It means that while a partner is the agent of the firm and the act of a partner which is done to carry on in the usual way, the business of the firm binds the firm in the absence of usage or custom or trade to the contrary, a partner has no authority, to compromise or relinquish any claim on behalf of the firm. Where a certain amount is validly due to the firm one partner has no implied authority to relinquish a portion of the claim unless there be a custom or usage to the

contrary, to do so. There cannot be any dispute regarding the said principles governing the scope of the implied authority of a partner in a firm. It cannot be disputed that a partner in a trading firm has a right to assign a debt, as it is an ordinary function of a partner and a transaction in the ordinary course of business of a partnership firm. However, the Legislature thought fit to impose a restriction that a partner has no implied authority to compromise or relinquish any claim or a portion of a claim by the firm. Therefore, it is clear that a decree can be assigned for a lesser amount, provided, all the partners have consented for the same either expressly or impliedly. In so far as this petition is concerned I find that the petitioner has not raised the objection in the manner it is being projected before this Court, now. In the counter-statement filed by him, in the trial court, an objection was taken on the ground that the assignment executed only by one of the partners of the decree-holder firm is not valid. However, it appears some argument was advanced on this ground and the trial Court has dealt with the same in a casual manner by stating that the decree can be assigned for a lesser amount but not for a higher amount. It is not known on what principle of law, the learned District Munsif came to the said conclusion.

4. Though the rule of law is that all the partners of a firm must join in a case of a compromise or relinquishment of a claim under a decree, it is open to the other partners of the firm to ratify an act of a partner which has been done by him in excess of the implied authority or without any authority " provided the act is such that it could be legally done with the authority of all the partners previously given and that the partners ratify the acts with full knowledge of the facts. It is also open to the other partners to waive their objections to such assignment, but it must be established as a matter of fact. In such a case, it amounts to conferring of fresh authority on the partner which has assigned the decree. Therefore, there cannot be an absolute rule prohibiting one of the partners to compromise or relinquish a claim under a decree. It is open to such partner to establish that it was done with the express consent of the other partners or that they had waived their objections to such assignment. Unfortunately, these aspects have not been gone into by the trial court, since there were no proper pleadings to that effect. In these circumstances, I find it not proper to dispose of the matter on merits at this stage. The matter has to be gone into afresh in the manner indicated above. Therefore, this civil revision petition is allowed and the order of the lower Court is set aside and the matter is remitted back to the trial Court for fresh enquiry and disposal in the manner as indicated above No costs. It is open to the assignee decree-holder to adduce evidence to show that the assignment was made with the consent of the other partners either express or implied. Both the parties are at liberty to adduce additional evidence. The lower Court is directed to dispose of the matter within two months from the date of receipt of a copy of this order.