(1989) 03 KAR CK 0022

In the Karnataka High Court

Case No : W.P. No. 15961/1986

Madaiah APPELLANT

Vs

Taluka Magistrate and Spl. Tahsildar, T.N. Purs and Others RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Karnataka Debt Relief Act, 1976 — Section 2

Citation : (1989) 1 KarLJ 340

Hon'ble Judges : H. G. Balakrishna, J

Judgement

Balakrishna, J.-A short point for consideration is whether the ratio of the decision in Rame Gowda v Sarojamma (1980(1) Kar. L.J. 348) is attracted to this case.

2. It is not disputed that the applicant-Marinanjamma died after the commencement of the Karnataka Debt Relief Act. It is no doubt true that in Ramegowda v Sarojamma the view taken by the court supported the case of the petitioner. But however the decision relied upon is no longer good law in view of the ruling in Gowramma v Taluka Magistrate (ILR 1986 (2) Kar. p. 1016). Significantly, the learned Judge who rendered the decision in the case of Ramegowda v Sarojamma is a party to the decision of the Division Bench in Gowramma v Taluka Magistrate In the said decision of the Division Bench this Court observed thus:

"Devaiah was alive when the Act came into force. He shall be deemed to have been relieved from his indebtedness if he were a debtor as defined under the Act. He had a right to recover possession of the mortgaged property free from encumbrance. Without taking delivery of the property, if Devaiah died, his wife is entitled to that property must be held to have the right to recover the property. She could do so by taking recourse to the procedure prescribed under the Act. She could not be driven to the court of general jurisdiction. The logical conclusion from the above discussion it must be proved that the original debtor, on the coming into force of the Act, was alive and he was a debtor entitled to the benefits under the Act.

The said observation contains the principles to be followed in the instant case. In Merry Muttu v Tahsildar, (ILR 1986(2) Kar. 1259) a Division Bench of this Court held that if a debtor was alive on the date of the commencement or the Act and dies subsequently either before making an application seeking releif under the provisions of the Act or after making an application, his legal representatives would be entitled to the benefit of the Act provided they prove that the deceased debtor was a debtor asdefined under the Act. What is required to be decided by the authorities concerned is the status of the debtor and not of his Legal representatives. If they prove that the person who had incurred the debt was a debtor as defined under the Act and therefore by the force of the provisions of the Act the debt due from him stood discharged and the mortgage stood redeemed, in a suit or any other proceeding in which the said debt is sought to be recovered, they are entitled to claim the benefit which was due to the debtor on the date of the commencement of the Act. Similarly they can also seek relief at the hands of the the competent Authority under Section 4 of the Act which the debtor could have secured from the said Authority.

3. The principle enunciated in this case also supports the argument of the learned Counsel for respondent-2, that the decision relied upon by the learned Counsel for the petitioner in Ramegowda v Sarojamma is no longer good law.

4. However there remains the question whether respondent-2 is in fact legal representative of the deceased debtor. This aspect of the matter requires investigation and obviously the investigation is one of fact. It is therefore necessary to remit the case back to the Taluka Magistrate and Special Tahsildar, T. Narasipura, Mysore District, only for limited question of investigating the enquiry and deciding whether respondents-2 to 4 are the legal representatives of the deceased debtor.

5. For the reasons stated above, I pass the following order:

The writ petition is partly allowed. The 1st respondent is directed to hold anenquiry and give a finding on the question whether respondent-2 to 4 are the legal representatives of the deceased debtor after affording a reasonable opportunity of hearing to all the parties concerned besides the opportunity of adducing the evidence. The 1st respondent is also directed to dispose of the case within four months from the date of receipt of the copy of this order It is also made clear that the order passed by the 1st respondent is disturbed only to the extent of clear and fresh determination of the question as to whether respondents 2 to 4 are legal representatives of the deceased-debtor and nothing beyond. However, as regards the discharge of the debt the impugned order stands confirmed.

In the circumstances of the case there will be no order as to costs.

Writ petition partly allowed.

