

(1962) 01 AP CK 0018
In the Andhra Pradesh High Court
Case No : A.A.O. No. 296 of 1959

Medaboyina Seethanna and Others

APPELLANT

Vs

Arubandi Sankara Lakshmi Devi and Others

RESPONDENT

Date of Decision : 08-01-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 21 Rule 96, Order 22 Rule 12, 50

Citation : AIR 1962 AP 520

Hon'ble Judges : P. Chandra Reddy, C.J.;Venkatesam, J

Bench : Division Bench

Advocate : C.V. Dikshitulu and K.V. Rama Sarma, for the Appellant; M. Krishna Rao, for Respondents 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—This is an appeal against the order of the Subordinate Judge, Visakhapatnam, accepting an application to add the legal representatives of the second judgment-debtor in O. S. No. 80 of 1933.

2. It arises in the following circumstances. In execution of a decree obtained by the present respondents against three persons including the predecessors-in-interest of the appellants, some of the properties belonging to the three judgment-debtors were brought to sale on 16-8-1954 and were purchased by the decree-holders themselves. The sale was confirmed on 20-9-1954 Sometime later, the decree-holder auction-purchasers filed a petition in the District Munsifs Court, Rajam, for delivery of possession of these properties making all the judgment-debtors parties to that application. It may be mentioned here that the decree was transferred to the District Munsifs Court, Rajam for execution, as the properties of the judgment-debtors were situated within the jurisdiction of that Court. It is for that reason that the application for delivery was presented in that Court. Meanwhile, the second judgment-debtor seems to have died. The auction-purchasers coming to know of it filed the petition in the Sub-Court that passed

the decree which has given rise to the present appeal, for adding the appellants as the legal representatives of the deceased second judgment-debtor under Sec. 50 of the Civil Procedure Code.

3. This was opposed by the judgment-debtors on the ground that Sec. 50 C. P. C. is inapplicable to the instant case.

4. The trial Court negating this contention allowed the petition and ordered the legal representatives of the second judgment-debtor to be brought on record. It is this judgment that is now under appeal.

5. The argument presented by Sri Dikshitulu, learned counsel for the appellants, is that as the application to bring the legal representatives on record was not filed within three years of the death of the judgment-debtor the relief prayed for ought not to have been granted. It is urged by the learned counsel that as no period of limitation is prescribed for delivery of possession of the properties, the residuary article i.e., Art. 181 of the Limitation Act governs such a case and since in this case the application for delivery impleading the proper persons as parties thereto was not filed within the time contemplated by Art. 181, it should have been rejected. The fact that the application for delivery was made in the District Munsif's Court, Rajam, against a dead person would be of no avail to the auction-purchasers as, in law, it does not amount to an application for delivery, and it is only when the legal representatives of the deceased judgment-debtor are brought on record that the petition under Art. 181 must be deemed to have been presented, proceeds the argument of Sri Dikshitulu.

6. We are not persuaded that this objection is substantial. It may be that Art. 181 governs applications of this kind. But the only requirement of that article is that it should be preferred within three years. It does not contemplate as to who should be impleaded as parties thereto. It is not disputed that the application for delivery of possession was filed within three years of the confirmation of sale, impleading all the judgment-debtors, one of whom died by that time.

7. What we have now to consider is whether this is fatal to the application. The provision of law which deals with the addition of legal representatives of a deceased party is Order 22 C. P. C. That order lays down that if the legal representatives are not brought on record within the time specified therein, the proceedings would abate. A perusal of that order reveals that it applies only to suits and appeals and is inapplicable to proceedings in execution of a decree or order.

8. Sri Dikshitulu maintains that the fact that O. 22, Rule 12 C. P. C. takes an execution application out of the pale of Order 22 C. P. C. does not help the respondents for the reason that an application for delivery of possession of property is not one in execution of a decree. Even so, how does it help the appellants? As we have already remarked, O. 22 C. P. C. governs only suits and appeals and does not come into play in regard to other proceedings. If there is no other law which compels a party to bring on record the legal representative

within a particular time, it cannot be posited that an application to bring the legal representatives on record in proceedings other than suits or appeals abates or lapses. The legal representatives have to be brought on record in such proceedings before final orders are passed, so that the orders might be binding on them. It is only for that purpose the present application was brought. It is to be borne in mind that after the sale is confirmed the title to the property covered by the sale vests in the auction-purchasers and nothing remains in the judgment-debtor. That being so, there is nothing for the judgment-debtor to urge by way of answer in an application for delivery of that property. Consequently, it is not necessary to issue notice to the judgment-debtor in such an application. If it is unnecessary to serve the judgment-debtors with notice, it is equally so even with regard to their legal representatives because they could oppose application only on grounds which were open to the judgment-debtors. So, possession could be obtained without notice to them or even without formally bringing them on record.

9. This view of ours gains support from the judgment of the Madras High Court in *Pethaperumal v. Chidambaram*, ILR (1954) Mad 1206. It was ruled by a division Bench of the Madras High Court consisting of Rajamannar C. J., and Rajagopala Ayyangar J. that there was no legal obligation on the part of a decree-holder to implead the legal representatives of a deceased judgment debtor at the stage of taking delivery of possession of property and the proceedings taken under O. XXI, R. 96, without impleading them could not be held to be void. The argument of Sri Dikshitulu, in this behalf is that this proposition is unsound and should not be accepted by us. We are not persuaded that the rule as started by the learned Judges in that case is incorrect. On the other hand, we are firmly of opinion that it is in consonance with the general principles of law.

10. There is also the decision of a Division Bench of this Court in *Sudarsanam Abbanna v. Deity of Sri Gopalaswamivaru of Nelaturu*, 1955 Andh WR 632 which reinforces our view. There, it was laid down that if a deceased judgment-debtor was mentioned in an execution petition under O. 21, R. 11 C. P. C. under the mistaken impression that he was alive, an application could be presented to bring the legal representative of the deceased judgment-debtor on record even after three years without incurring the penalty of dismissal of the execution petition as being barred by limitation. The learned Judges remarked that it was only correcting the name of the person against whom execution was taken out. Sri Dikshitulu seeks to distinguish this case on the ground that it dealt only with an execution petition and so the principle underlying it should not apply to an application for delivery of possession of property, as it cannot be described as an application for execution. We are not convinced that this distinction is real. The principle is the same. If the delay in seeking to bring the legal representatives on record is not detrimental to an execution petition, we fail to see how it affects the validity of an application of this kind. On the other hand, we feel that the present is an a fortiori case. An application to bring on record the legal representatives is nothing more than one for correcting the cause title in the

petition for delivery of possession of property.

11. Sri Dikshitulu, learned counsel for the appellants then urges that 1955 Andh WR 632, does not embody the correct law and it requires reconsideration. We do not think that we can give effect to this argument. This view has been consistently taken by the Madras High Court and has also been followed by the Calcutta and Patna High Courts for a number of years. It is now too late to question its correctness.

12. For all these reasons, we find it difficult to uphold the objections raised by the learned counsel for the appellants.

13. In the result, the order under appeal is confirmed and the appeal is dismissed with costs.