
(1977) 02 KAR CK 0029
In the Karnataka High Court

Minin Kamel Alfanso and Others

APPELLANT

Vs

Ramakant Vinayak Gaonkar and Others

RESPONDENT

Date of Decision : 08-02-1977

Acts Referred:

Bombay Agricultural Debtors Relief Act, 1947 — Section 34
Transfer of Property Act, 1882 — Section 82

Citation : AIR 1977 Kar 135 : (1977) 1 KarLJ 196

Hon'ble Judges : K. Jagannatha Shetty, J;D.S. Tewatia, J

Bench : Division Bench

Advocate : K.I. Bhatta, for the Appellant; T.S. Ramachandra and T.S. Krishna Bhat, for the Respondent

Judgement

1. This second appeal has come up before us upon a reference made by Venkataramiah. J.

2 The facts, which are not now in dispute, are these: The appellants are legal representatives of one Kamil B. Alfanso. On 14th February 1934, Kamil and U.Gopalacharya together executed a mortgage deed hypothecating their individual properties in favour of one Shantararn Mangesh Kulkarni and obtained a loan of Rs. 6,500/-. On default to redeem the mortgage, Shantararn filed a suit O. S.No. 86 of 1940 against the executants and obtained a decree for Rs. 9,080/- together with future interest at 6% per annum. The final decree in the suit was made on 17th October 1942.

3. When the said decree was under execution, the Bombay Agricultural Debtors Relief Act 1947 (Bombay Act 28 of 1947) (shortly called "the Act"), came into force and the execution proceedings consequently stood transferred to the Court constituted under the Act ("B. A. D. R. Court")? In the proceedings before the B. A. D. R. Court, Kamil was held to be a debtor within the meaning of the said Act, but Gopalacharya was not. Consequently, the liability of Kamil under the decree in question and also in respect of another decree was scaled down to Rupees 4,320/- and the decree-holder was held entitled to recover from Kamil

only the said amount. Kamil was also permitted to pay the said amount by 12 annual installments, which he accordingly paid.

4. Since Gopalacharya was not adjudged to be a debtor under the Act, the decree-holder proceeded against him and realized a total sum of Rs. 15,993/- said to be the balance of the decretal debt. The said amount was deposited by Gopalacharya on 7th January 1964.

5. Thereupon, Gopalacharya sued the legal representatives of his co-judgment debtor, i. e. Kamil, since deceased, to recover the entire amount deposited by him towards the full satisfaction of the aforesaid decree. His case was that he was compelled to discharge the decretal debt although he did not receive any benefit under the mortgage. So he said that he was entitled to get back the amount deposited by him by way of contribution from the assets of Kamil. The defendants resisted the suit on various pleas, which may not be necessary to set out herein. Suffice it to state, that the Courts have decreed the suit to one half of the plaintiffs claim holding that the plaintiff and Kamil had jointly executed the mortgage deed and the plaintiff was entitled to sue for contribution.

Aggrieved by the decision, the defendants have preferred the second appeal, and the legal representatives of the plaintiff, since deceased, have also preferred cross-objections.

6. The contention urged for the appellants rested on S. 34 of the Act. It was urged that in view of the award made by the B. A. D. R. Court, Kamil was not liable to pay anything more than the amount of debt scaled down thereon, as the portion of the debt in excess of the amount scaled down was statutorily extinguished. It was further urged that since the liability of Kamil in excess of Rs. 4,320/- under the decree stood extinguished, the plaintiff's suit for contribution was also not maintainable.

7. The argument. Though attractive at the first sight. Really lacks in substance. It overlooks the two-fold decretal liability of a co-judgment debtor. The co-judgment debtors are in the -position of joint promisors. Each of them is jointly and severally liable to the decree holder, and also inters se liable to each other to contribute towards discharge of the decretal debt. The joint and several liability of each of the co-judgment debtors is quite different from their liability inter se. The liability of Kamil under the first category was no doubt discharged upon the payment of the award amount determined by the B. A. D. R. Court. But it could in no way affect the mutual liability of the second category.

8. The position perhaps would have been different if both the judgment debtors were adjudged as debtors within the meaning of the Act. But, as we have earlier observed that in the proceedings before the B. A. D. R. Court, only Kamil was adjudged as debtor entitled to the benefits under the Act and not Gopalacharya. The decree in question was therefore kept undisturbed against Gopalacharya and the decree holder was free to realise the decretal amount from the latter, less the amount paid by Kamil under the award of the B. A. D. R. Court. Since

Gopalacharya was compelled to pay the balance of decretal amount, he could, therefore, proceed against Kamil, or his legal representatives for contribution by the principles provided by S. 82 of the T. P. Act.

9. Our view finds support from the decision in AIR 1948 292 (Nagpur) wherein a similar question came for consideration on facts lying- in close parallel. It was observed at p. 293: -

"As soon as a decree was passed, the co-judgment-debtors were in the position of joint promisors, each of them being liable jointly and severally to the decree holders and mutually liable to one another to contribute towards the performance of the promise. The applicants before the Relief Court in which the debt was discharged are not absolved from their liability to their joint promisors. This liability between the joint promisors is no doubt latent until one of them satisfies the decretal amount, but on satisfaction of the decree, as was done in the present case on 12-4-1944, that liability becomes patent and can be enforced against other joint promisors and it is in no way affected by the discharge obtained by that joint promisor from the creditor either under an agreement or under the Relief Act."

10. This takes us to the question of determining the exact liability of the defendants. The trial Court has stated that the plaintiff has paid Rs. 15,993/- towards the full satisfaction of the decree and Kamil has paid Rs 4,320/-. It has given set off to the payment made by Kamil from the total decretal debt and directed the recovery of one half of the balance out of the assets of Kamil, now in the hands of his legal representatives, But the lower appellate court appears to have adopted slightly a different principle. But, the correct approach to the problem, in our opinion, is that the defendants would be liable to one half of the decretal amount excluding the amount paid by them pursuant to the award of the B. A. D. R. Court. They should, however, not be saddled with the interest which has accrued on the default of the plaintiff's share under the decree. Counsel on both sides have agreed with this principle and produced before us a memo of calculation, which is set out below:

1. Half of the decretal amount.Rs.4,540-00

2. Interest at 6 % per annum on Rs. 4,540/- from 17-10-1942 to 17-10-1951. ...
Rs. 2,352-40

3. Total due by appellant an 17-10-1951Rs.6,892-00

4. Proportionate reduction under B. A. D. R. Award

In respect of Rs. 9,080/- Rs.3,656-00

5. Total amount remaining in balance as on 17-10-1951Rs.3,236-00

6. Interest on Rupees 3,236.40 from 17-10-1951 to April 1965. Rs.2,621-00

Total liability of appellants on the date of suit. Rs. 5,857-00

We record the above memo.

11. In the result, we allow the appeal in part, and in modification of the decree of the courts below, there shall be a decree against the defendants for Rs. 5,857/- with future interest at 6% per annum from the date of suit till realisation. The plaintiff is entitled to recover the decretal amount from the assets of deceased Kamil. Received by his legal representatives.

In view of the conclusion that we have reached, the cross-objections Preferred by the respondents is dismissed.

In the circumstances, we make no order as to costs in this appeal.

12. Appeal partly allowed.