

(1998) 07 KAR CK 0080

In the Karnataka High Court

Case No : Civil Revision Petition No. 1559 of 1993

Ningamma and Others

APPELLANT

Vs

Puttaswamy Gowda (Deceased) by L.Rs and Others

RESPONDENT

Date of Decision : 20-07-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 1, Order 32 Rule 15, Order 32 Rule 4, 151

Citation : AIR 1999 Kar 125 : (1999) 1 KarLJ 283

Hon'ble Judges : Mohamed Anwar, J

Bench : Single Bench

Advocate : Sri G.S. Bhat, for the Appellant;

Judgement

1. This revision by the legal representatives of the deceased judgment debtor Nagaiah is directed against the order dated 14-10-1992 of the executing Court viz., the Court of the Civil Judge, Junior Division, made in Ex. Case No. 22 of 1978 rejecting their two applications one made pleading that the judgment-debtor was a person of unsound mind: and another was filed raising the plea that he was a debtor under the Karnataka Debt Relief Act, 1980 and therefore his liability under the decree in execution stood discharged.

2. The course of litigation between the parties could be stated as under. Respondent Puttaswamy Gowda, since deceased, was the decree-holder in Execution Case No. 22 of 1978 pending on the file of the Court below. He had obtained a money decree in O.S. No. 87 of 1976 against the deceased judgment debtor Nagaiah. Who was defendant in the said suit and was represented by a Counsel named H.S. Ramaswamy of the local Bar. It was a money suit. It ended in a compromise decree dated 23-3-1979. On 10-1-1978 the decree-holder filed execution petition in EP No. 22 of 1978 in the Court below seeking execution of said decree against the judgment-debtor. The attachment of the latter's Immovable property was effected on 15-3-1978 and the same was brought to sale on 26-10-1978 in the course of the execution proceeding. By order dated

25-10-1978 of the executing Court made on the decree-holder's application he was permitted to bid the property at the public auction. Accordingly, he participated in the said Court auction and was a successful bidder. His bid was accepted on 30-11-1978 by the executing Court. The case was adjourned to 30-11-1978 for confirmation of the sale of the said property to him on which date the judgment-debtor's wife Nagamma, who is petitioner 1, filed LA. No. III under Order 32, Rules 1 to 4 and 15 read with Section 151 of the CPC in the said execution proceeding praying that she may be appointed as the guardian of her judgment-debtor/husband as he was a person of unsound mind. Her application was rejected by order dated 21-1-1981 of the executing Court. Then, the sale was confirmed in decree-holder's favour and the said sale certificate was issued to him on 5-2-1981 by the executing Court.

3. The order dated 21-1-1981 of the Court below passed rejecting the first petitioner's said LA. No. III was challenged by her in revision before this Court in CRP No. 1978 of 1981 which came to be allowed by order dated 11-1-1985 of this Court remitting the matter and directing the executing Court to decide the question whether or not the judgment-debtor is a person of unsound mind, after collecting the medical evidence report from the competent Doctors. Thereafter, the proceeding in Execution Case No. 22 of 1978 continued on the file of the Court below. The judgment-debtor was got examined by Dr. A. Halappa, District Surgeon of Mandya and his report dated 8-8-1986 stating that the judgment-debtor was not a person of unsound mind was secured. That report of the District Surgeon was not accepted by the Court below. Therefore, on 28-11-1986 it was suggested by both parties that the judgment-debtor may be subjected to the medical examination of the Dr. C.R. Chandrashekhar of NIMHANS, Bangalore. Accordingly, he was referred to Dr. C.R. Chandrashekhar. But, the latter addressed a letter to the Court below on 15-12-1986 requesting to refer the judgment-debtor to the examination of Dr. Channabasanna of NIMHANS. Then an order dated 16-12-1986 was passed by it appointing Dr. Chandrashekhar as the Commissioner for the purpose. But, by then judgment-debtor's health became critical and he could not recover from his illness and he died of the same on 12-3-1987. As a result, he could not be examined by the competent doctors and their report respecting the mental condition of the judgment-debtor could not be secured by the Court below for its decision of the said question. Therefore, the fact remains that the petitioner could not prove her case before the executing Court that her husband-judgment-debtor was a person of unsound mind.

4. Thereafter another application was filed by the petitioners, as legal representatives of the deceased judgment-debtor, u/s 3 of the Karnataka Debt Relief Act 1980 ("Debt Relief Act" for short) praying to declare the liability of the judgment-debtor under the said decree as discharged by virtue of the Section 3 of the Act. This application was opposed and contested by the decree-holder on the ground that the petitioners-legal representatives of the deceased judgment-debtor, are not entitled to invoke the benefit of Section 3 of the Debt Relief Act since this benefit was available to the judgment-debtor alone in his individual

capacity.

5. On consideration of the material on record the Court below concluded that it was not proved by the petitioners that the judgment-debtor was a person of unsound mind: and it also held that they are not entitled to invoke the aid of Section 3 of the Debt Relief Act, being the legal representatives of the deceased decree-holder. Accordingly, the impugned order has been passed by it rejecting both applications of petitioners.

6. Learned Counsel for petitioner was fair enough in his submission that he does not press the first ground of attack urged against the impugned order of the Court below in view of the fact that undisputedly the plea of petitioner that her judgment-debtor husband was a person of unsound mind had remained not proved by any convincing and satisfactory medical evidence.

7. However, he argued that the finding of the Court below that the petitioners as legal heirs of the deceased judgment-debtor are not entitled to maintain an application under the provisions of the Debt Relief Act for the relief from indebtedness contemplated u/s 3 thereof, is patently illegal. Support for this submission was drawn by him from a Division Bench decision of this Court in *Merry Muttu Vs. Tahsildar*, . At this juncture it needs mention that the respondent-decree-holder was represented by learned Counsel Mr. S.P. Shankar. Respondent died during the pendency of the petition. His L.Rs are then duly substituted in his place. After hearing arguments of learned Counsel for both parties in part, they were advised to see if the dispute between the parties could be compromised. Then they took time to use their good offices to bring about certain settlement between the parties. On 15-12-1988 it was submitted by learned Counsel for petitioners that a settlement between the parties to the effect that petitioners should pay Rs. 40,000/- in full satisfaction of the decree in question was arrived at and that the petitioners had brought the said amount also to pay the same to respondents, who are the L.Rs of deceased decree-holder. Respondents were not present in Court on that date. Therefore, Mr. S.P. Shankar sought time to secure their presence and consult them about the compromise reported by petitioner's learned Counsel. On subsequent date of hearing Mr. S.P. Shankar retired for respondents submitting that the latter were not agreeable to any such compromise. He filed a memo for retirement enclosed with a copy of his office letter (together with the postal acknowledgment) addressed to respondent 1. He was permitted to retire and he retired for them. Thereafter respondent have not chosen to further contest the petition.

8. Section 3 of the Act contemplates, inter-alia, that not- withstanding anything contained in any law in force or in any contract or instrument having force by virtue of any law or otherwise provided in the Act with effect from and the date of its commencement any debt incurred by a debtor before the date of commencement of the Act and payable by him to his creditor shall be deemed to be wholly discharged: and no Civil Court shall entertain any suit or other proceeding against the debtor or the surety for recovery of any amount of such

debt".

Section 3 further envisages that:

" All suits and other proceedings including the appeals, revisions, attachments or execution proceedings, pending on the date of commencement of this Act against any debt or surety for recovery of such debt shall abate".

Further, the proviso to clause (c) stipulates that nothing in clause (c) shall apply to the sale in relation to any such debt of any Immovable property held through Court and confirmed before such commencement. The term "debt" is defined by Section 3(b). Section 3(b) defines the term "debt" as any liability in cash or in kind whether decreed or not and includes any amount which is in substance a debt, but excluding the arrears due to Central Government or State Government or Local Authority.

9. In the instant case the decree under execution was passed on 23-3-1978. In execution of the said decree the judgment-debtor's Immovable property was brought to sale and was purchased by the decree-holder himself on 26-10-1978 in a Court auction and that the sale in his favour was confirmed on 5-2-1981. By virtue of sub-section (2) of Section 1 of the Act, the Act is deemed to have come into force on the 15th of November, 1979. Therefore, the confirmation of the sale of the attached Immovable property of the judgment-debtor in favour of decree-holder having taken place subsequent to the Act coming into force, i.e., 5-2-1981, the decree in execution falls squarely within the ambit of Section 3. This Court in the case of Merry Muttu, *supra*, dealing with the scope of Section 3(g) has held:

"If a debtor was alive on the date of the commencement of the Act and dies subsequently either before making an application seeking relief 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 as defined 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 is due to the debtor on the date of the commencement of the Act. Similarly they can also seek relief at the hands of the Competent Authority u/s 4 of the Act which the debtor could have secured from the said Authority". (Head Note 2)

10. Therefore, the view taken by the Court below that the petitioners who are the L.Rs of the deceased judgment-debtor were not entitled to make application under the Act invoking the benefit thereof is an erroneous view in law. In that view of the legal position, the petition is entitled to succeed and the matter has to be remitted to the Court below with a direction to dispose of the petitioner's

application made u/s 3 of the Debt Relief Act on its merits.

11. Hence, the petition is allowed.

The impugned order of the Court below so far as it relates to rejection of the petitioner's application u/s 3 of the Karnataka Debt Relief Act, 1980, is set aside. The matter is remitted to it with a direction to proceed to deal with the said application afresh and pass an order therein on merits in accordance with law and in the light of the observations made hereinabove.

Parties to bear their own costs in the circumstances.