

(1957) 07 AP CK 0016

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 76 of 1955

Peddireddi Ganga Raju

APPELLANT

Vs

Kandula Mangamma and others

RESPONDENT

Date of Decision : 11-07-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73, 73(1)

Citation : AIR 1958 AP 334

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : Adavi Rama Rao, for the Appellant; K. Sivaprasada Rao for P.V. Vallabhacharlu, for the Respondent

Judgement

Umamaheswaram, J.—This is an application by the decree-holder in Small Cause Suit No. 674 of 1953 to revise the order of the Subordinate Judge, Kakinada in E. P. No. 260 of 195(sic) allowing rateable distribution under S. 73, Cod(sic) of Civil Procedure, to the decree-holder i(sic) Small Cause Suit No. 476 of 1952.

2. In order to appreciate the contention raised by Sri Adavi Rama Rao, the learned Advocate for the Petitioner, it is necessary set out a few relevant facts. The respondent herein filed E. P. No. 429 of 1953 in execution of his decree in S. C. No. 476 of 1952 a(sic) attached the cattle belonging to the 3rd judgement-debtor Mangamma. The cattle were entrusted to a surety who executed a bond under taking to produce the cattle as and when call upon to do so.

As the surety did not later on produce t(sic) cattle, the Execution Petition was dismissed 1-3-1954. The decree-holder thereupon fil(sic) E. P. No. 237 of 1954 on 8-3-1954. Meanwh(sic) the same cattle were attached by the petition herein in E. P. No. 260 of 1954 in execution his decree in S. C. No. 674 of 1953 and a s(sic) of Rs. 362-13-0 was realised by sale on 22 1954, The respondent herein, contended the as he had filed E. P. No. 232 of 1954 in execution of his decree passed against the sa(sic) judgment-debtor, he was entitled to claim r(sic)able distribution. The Court below allowed application and the decree-holder in S. C.

(sic) 674 of 1953 has filed the present revision application.

3. Two points were raised by Sri Ad Rama Rao, on behalf of the petitioner: (1) t(sic) there is no application specifically praying r(sic) able distribution under the terms of S. C. P. C. and that therefore no relief ought have been granted; (2) that the terms of S. (1) are not complied with as the respondent was seeking to execute the decree only by forcement of the surety bond.

4. There is no force in the first content What is required under the terms of S(sic) C. P. C. is that more persons than one sh(sic) have, before the receipt of the assets, n(sic) application to the Court for the execution decrees for the payment of money pa(sic) against the same judgment-debtor. As t(sic) was already E. P. No. 237 of 1954 filed the respondent, there was no need for to pray therein that he was entitled to rate distribution. As pointed out by Subbarao (sic) in Jambanna v. Hbnappa, 1956 Andh WR 1 (AIR 1957 Andh Pra 1017) (A), the impo(sic) condition is whether the party seeking rate distribution had filed an application for e(sic)tion of the decree for the payment of m(sic) before the receipt of assets.

5. The second point raised by Sri A(sic) Rama Rao depends upon the correct inters(sic)tion of S. 73 (1), C. P. C. Section 73 (1), far as it is relevant runs as follows :

Where assets are held by a Court more persons than one have, before the re(sic) of such assets, made application to the (sic) for the execution of decree for the payment money passed against the same judgment-d(sic) and have not obtained satisfaction thereof What the section enacts is that before the(sic)pt of the assets, the application for execution could have been filed and the decree for the (sic)bney should have been passed against the me judgment-debtor. The liability that was (sic)ught to be enforced as against the surety was (sic)e liability due under the decree. There is doubt mat the surety was bound to produce cattle of the judgment-debtor which were trusted to him. As he had defaulted to produce the cattle, he had to pay the price of the (sic)tle. It cannot be contended that there was (sic)ly a decree for payment of money against the surety and that it was a new liability. In Hoti Lal Vs. Chatura Prasad and Others, , Iqbal Ahmed J., pointed out why the (sic)rd "passed" was newly introduced in S. 73 the Code. The observations are as follows :

The Legislature, in my judgment, added (sic) word "passed" in the new section in order make it clear that the words "against the (sic)e judgment-debtor" had reference to the (sic)rees themselves, and not to the various publications for execution contemplated by the (sic)tion.

Rama Rao, the learned Advocate for the petitioner, relied upon the decision of the Nagpur High Court in Sakharam v. Mahadeo, (sic)R 1940 Nag 79 (C), followed by the Oudh (sic)irt in Khagendra Nath v. P. C. Rai, AIR 12 Oudh 491 (D). The learned Judge took (sic) view that if the liability was sought to be (sic)forced as against the surety, it must be treated as a distinct and separate liability. I am

prepared to agree with those decisions. The (sic)ned Judges have not referred to the important words in S. 73 viz.;

for the execution of (sic)rees for the payment of money passed against the same judgment-debtor.

The liabi(sic) sought to be enforced against the surety is by reason of the decree having been pass(sic) against the same judgment-debtor. I therefore accept the view taken 5y the Court below hold that the rateable distribution was tly allowed.

6. In the result, the Civil Revision Petition fails and is dismissed with costs.