(2002) 04 MAD CK 0030

In the Madras High Court

Case No : C.R.P. No''s. 3694 of 2000 and 3658 of 2001

Regional Manager, L.I.C. of India, Thanjavur — APPELLANT

Vs

John Bosco, Vimala Xavier and Reena rep. by Mother and Guardian — RESPONDENT

Date of Decision : 16-04-2002

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 60, 60(1)

Citation : AIR 2002 Mad 348 : (2003) 1 CivCC 574 : (2002) 3 LW 600 : (2002) 2 MLJ 321

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : S. Subbaiah, for the Appellant; V.M.G. Ramakannan, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—The revision petitioner is the third defendant in O.S.No.17 of 1995 on the file of the learned Additional Subordinate

Judge, Nagapattinam, laid by the first respondent/decree holder for recovery of money against the respondents 2 and 3 impleading the revision

petitioner as third defendant in the suit and attaching the money payable by the third defendant towards the policy held by one Xavier (deceased),

namely, father of the respondents 2 and 3. Even though the said policy of the deceased Xavier was initially attached and the suit was decreed

against the respondent 2 and 3, the same was dismissed against the third defendant/revision petitioner herein by decree dated 29.11.1996.

2. However, the first respondent/plaintiff in O.S.No.17 of 1995 initiated execution proceedings in E.P.No.106 of 1999 and proposed to attach the

policy amount payable to the said Xavier (deceased), impleading the revision petitioner/third defendant as a garnishee. The revision petitioner/third

defendant resisted the execution proceedings placing reliance on proviso (kb) to Section 60(1) C.P.C., contending that the amount payable under

the policy cannot be attached as the same is exempted under proviso (kb) to Section 60(1) C.P.C. But the first respondent/plaintiff in O.S.No.17

of 1995 contended that proviso (kb) to Section 60(1) C.P.C. is applicable only to the policy amount of the judgment-debtors/respondents 2 and

3, but not of the deceased Xavier, who is not a party to the suit. However, the Execution Court, by order dated 11.2.1999 in E.P.No.67 of 1997

accepting the case of the decree holder/plaintiff attached the policy amount payable to the deceased Xavier.

3. In the meanwhile, the judgment holders/respondents 2 and 3 herein had independently initiated proceedings before the the District Consumer

Disputes Redressal Forum, Thanjavur, in C.D.O.P.No.117 of 1996, claiming payment of policy amount payable to their father, namely Xavier

(deceased), and the District Consumer Disputes Redressal Forum, Thanjavur, by order dated 13.2.1996 awarded the policy amount and the same

was deposited to the credit of the said C.D.O.P. Since the policy amount was deposited before the District Consumer Disputes Redressal Forum,

Thanjavur, the first respondent/decree holder again complained that the attachment dated 11.2.1999 made in E.P.No.67 of 1999 was not given

effect to and filed another eviction proceedings in E.P.No.106 of 1999 for attachment of the petitioner mentioned movable properties of the

revision petitioner/third defendant. The Execution Court overlooking the fact that the revision petitioner/third defendant had already deposited the

policy amount to the credit of C.D.O.P.No.117 on the file of the District Consumer Disputes Redressal Forum, Thanjavur, attached the movables

by order dated 19.10.2000. Hence, the above revisions.

4. The learned counsel for the revision petitioner and the respondents reiterated their submissions that were argued before the Courts below.

5. The only vital point drawn for my consideration in the above revisions is whether the policy amount payable by the third defendant/petitioner,

even though initially attached by an order before judgment dated 23.7.1996, is attachable even after the said suit, namely O.S.No.17 of 1995 is

itself dismissed against the third defendant/revision petitioner, and particularly whether the policy amount is exempted from the attachment in view

of proviso (kb) to Section 60(1) C.P.C., which reads as follows:

Section 60: Property liable to attachment and sale in execution of decree:

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-

notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a

corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over

which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the

judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:

(a) to (ka) ....

(kb) all moneys payable under a policy of insurance on the life of the judgment-debtor.

6. While Mr.S.Subbaiah, learned counsel appearing for the revision petitioner, placing reliance on the decision in Federal Bank Ltd. Vs. Indiradevi

Kunjamma and Others, strongly contends that insurance policy amount cannot be attached, as they are exempted under proviso (kb) to Section

60(1) C.P.C., Mr.V.M.G.Ramakannan, learned counsel for the first respondent, resists the contention on the ground that proviso (kb) to Section

60(1) C.P.C. is not attracted in the instant case, as the policy sought to be attached is not a policy of the judgment debtors, but that of their father

Xavier (deceased).

7.1. Proviso (kb) to Section 60(1) C.P.C., no doubt, exempts all money payable under the policy of insurance under the life of the judgment

debtor, but the policy amount under life insurance scheme only confers a right not on the policy holder but on his legal representatives. Therefore,

moneys payable under the insurance policy of a judgment debtor are entirely exempted from the attachment and sale, irrespective of the

circumstances as to whether the insurance policy matures during the life time of the assured or the moneys become payable after the death of the judgment debtor, as held by the Apex Court in Smt. Sarbati Devi and Another Vs. Smt. Usha Devi,

7.2. The legislative object behind the above exemption protected under proviso (kb) to Section 60(1) C.P.C. is that the money payable under the

policy of insurance of life of a policy holder is intended to give some security to his heirs and legal representatives. Such legislative object, in my

consideration, cannot, in any way be diluted, merely because the policy amount sought to be attached is that of the judgment debtor or otherwise;

as otherwise, the intention of the legislature to provide security to the legal representatives of the policy holder would be defeated.

7.3. If that be so, even though in the instant case the decree holder/first respondent proposed to attach the policy amount payable to the father of

the judgment-debtors/respodnents 2 and 3, in my considered opinion, it would offend the legislative object enshrined under proviso (kb) to Section

60(1) C.P.C., and therefore, such policy amount of the father of the judgment debtors/respondents 2 and 3 is also not attachable. Hence, finding

the reasons for attaching the policy amount of the father of the judgment-debtors/respondents 2 and 3 is not justified and opposed to the spirit and

scope of proviso (kb) to Section 60(1) C.P.C., the same are set aside, but without prejudice to the right of the decree holder to execute the

decree dated 29.11.1996 made in O.S.No.17 of 1995 against the respondents 2 and 3 herein, in the manner known to law.

In the result, revisions are allowed. No costs. Consequently, C.M.P.Nos.19737 of 2000 and 7363 of 2001 are closed.

