
(2012) 03 AP CK 0071

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3537 of 2011

Sake Gurumurthy (died) per LRs and Smt. Ramalakshmi

APPELLANT

Vs

Duggasani Kullai Reddy and Another

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60

Citation : (2012) 4 ALD 115 : (2012) 4 ALT 167

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Karibasaiah, for the Appellant; N. Parameswara Reddy Counsel, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This Civil Revision Petition is filed against Order, dated 30-11-2010, in EA. No. 217 of 2010 in EP. No. 81 of 2010 in OS. No. 284 of 2002, on the file of the Court of the learned Junior Civil Judge, Pulivendula, Kadapa District. The petitioner is the wife of the judgment debtor, who died during pendency of the Execution Proceedings referred to above. The deceased judgment debtor was a teacher in the Government school and was, hence, a Government Employee. After his death, the petitioner herein was impleaded as the respondent in EP. No. 81 of 2010. Pending the EP, respondent No. 1/decreed holder filed EA. No. 217 of 2010 for attachment of the EP amount of Rs. 1,34,000/-from out of Rs. 5 lakhs receivable by the petitioner towards the gratuity, arrears of salary and leave encashment pertaining to her husband. The said application was allowed by the lower Court by the impugned Order. Feeling aggrieved by the same, the present Civil Revision Petition is filed by the petitioner.

2. I have heard Sri. K. Karibasaiah, learned Counsel for the petitioner, and Sri. N. Parameswara Reddy, learned Counsel for respondent No. 1.

3. The learned Counsel for the petitioner submitted that the impugned Order passed by the lower Court is contrary to the provisions of Section 60 (g) of the Code of Civil Procedure, 1908, whereunder gratuity is exempted from attachment.

4. The learned Counsel for respondent No. 1 placed reliance on a Division Bench judgment of the Kerala High Court in Sathyavathy Vs. Bhargavi (died), Vijayan and Another, in support of his submission that the gratuity will lose its character with the death of the employee and that it becomes a debt payable by the employer to the legal representatives of the deceased employee.

5. I have gone through the judgment of the Kerala High Court (cited supra), wherein the Division Bench, at Para 7, held as under:

Admittedly the gratuity amount is now in the hands of the Department. It is difficult to say that at the time when the attachment was sought the amount of gratuity is held by the Department in trust for the judgment-debtor, because now the judgment-debtor is dead and no one can have property in trust for a dead person. True once the property was held by the Department perhaps in trust for the deceased wife of the 2nd respondent. But, when once she died, it is difficult to hold that again the property is held by the Department in trust for the deceased wife. Then what is the character of the property held by the Department. We feel that it can only be a debt to be paid to the legal representatives of the deceased. Being the legal representatives of the deceased, they have got a claim to get the amount which was earned by the deceased wife of the 2nd respondent as gratuity. Since it is only a debt in the hands of the Department, there is nothing wrong in attaching the property for realization of the amount due from the judgment debtor. It cannot be disputed that the amount that can be now realized by the Department from the legal representatives is not an asset of the deceased. Assets of the deceased are liable to the debts of the deceased. If the assets came in the possession of the legal representatives or if the assets are held by some person for the legal representatives of the deceased, the properties are liable to be attached.

6. Admittedly, in the present case, the judgment debtor, who is a Government servant, has died and the gratuity and other amounts payable to him were sought to be recovered from his wife, who is his legal representative. Having regard to the Division Bench judgment of the Kerala High Court (cited supra), with which I am in agreement, I do not find any merit in the submission of the learned Counsel for the petitioner.

7. For the above-mentioned reasons, the Civil Revision Petition fails and the same is, accordingly, dismissed. As a sequel, CRPMP. No. 5066 of 2011, filed by the petitioner for interim relief, is disposed of as infructuous.