
(2003) 09 AP CK 0076
In the Andhra Pradesh High Court
Case No : CRP No. 889 of 2003

S.B. Ramanaiah @ S.B. Ramana and Others	APPELLANT
Vs	
C. Venkata Subbaiah	RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 52, Order 9 Rule 13

Citation : (2004) 4 ALD 554

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : H. Prahalad Reddy, for the Appellant; B.S. Venkata Rao, for the Respondent

Final Decision : Allowed

Judgement

D.S.R. Varma, J.—Even though notice was served, none appeared for the respondent. Heard the Counsel for the revision petitioners.

2. This revision is filed challenging the order and decree dated 25-11-2002 passed by the Court of Principal Junior Civil Judge, Kurnool in E.P. No. 901/2000 in OS No. 252/2000.

3. By the impugned order, the Court below allowed the E.P. filed by the decree holder under Order 21 Rule 52 CPC for attachment of amount of judgment-debtors, which was deposited in M.V.O. No. 494/1999 on the file of the IV Additional District Judge, Kurnool in favour of the judgment-debtors, to the extent of the E.P. amount and for payment of the same to the decree holder. Aggrieved by this order, the judgment-debtors filed this revision petition.

4. The undisputed facts are that the respondent herein who is the plaintiff, filed a suit against S.B. Ramanaiah, who is the husband of the judgment-debtor No. 1, in the year 2000 for the recovery of the money, on the strength of a promissory note and obtained an ex parte decree on 28-7-2000. But admittedly the husband of the 1st respondent died on 25-7-1999 in an accident, meaning thereby that

the suit was filed against a dead person. Having come to know that the original judgment-debtor died, the plaintiff filed E.P. No. 901/2000 against his legal heirs, who were originally not impleaded in the suit. The petitioners while opposing the present petition filed for attachment under Order 21, Rule 52 CPC., simultaneously filed another application in IA No. 387/2002 under Order 9, Rule 13 CPC for setting aside the ex parte decree on the ground of non-service of suit summons. It is on record that the petition filed for setting aside the ex parte decree in IA No. 387/2002 is still pending and by the impugned order, the Court below allowed the E.P. filed for attachment.

5. From the above facts, in my considered view, the effect of the suit filed against a dead person and obtaining an ex parte decree and also the other consequences with regard to bringing of the legal representatives on record, limitation etc., have to be examined first. Such examination of course is not permissible under this revision.

6. But it is to be noted that the Court below had the knowledge at least in the E.P. that the suit was filed against a dead person, since the plaintiff sought for attachment of the amount deposited in the MVOP owing to the death of the original defendant. Further admittedly the petition filed under Order 9, Rule 13 of CPC is still pending and if the said petition is allowed, the ex parte decree will be set aside. In such a case, in my considered view, the Court below ought to have restrained itself from passing the impugned order.

7. In fact, notwithstanding the petition filed under Order 9, Rule 13 of CPC by the petitioners, as stated above, a duty is cast upon the executing Court to go into the aspect of executability of the decree, since admittedly the suit was filed and decree was obtained against a dead person. It is further to be noted that all questions relating to execution have to be decided by the executing Court u/s 47 of CPC and a separate suit is barred.

8. In the instant case, if Order 9, Rule 13 petition is allowed and eventually in any event, the suit is reopened, it is the original Court, which has to decide the validity or otherwise of the suit filed and decreed against a dead person. It amounts to deciding the suit afresh, by which time, the E.P. filed by the plaintiff against the legal heirs would attain finality.

9. Again coming to the facts of the case, it is to be seen that as per the averments made by the petitioners herein, the defendant died on 25-7-1999 and the suit was filed subsequently in the year 2000. No steps have been taken by the plaintiff to bring the legal representatives on record. Only when the present execution petition is filed, perhaps the plaintiff came to know about the death of the plaintiff and filed the present E.P. against the legal representatives. Hence, in view of the factual position, it is imperative for the Court below to enquire about the executability of the decree as enjoined u/s 47 of CPC.

10. Hence, the executing Court notwithstanding the pendency of Order 9, Rule 13 petition, shall conduct an enquiry about the executability of the decree having

regard to the facts and circumstances put forth by the petitioners.

11. Accordingly the impugned order is set aside and the revision petition is allowed with the above direction. No costs.