(2006) 07 AP CK 0034

In the Andhra Pradesh High Court

Case No : C.R.P. No. 1270 of 2006

Smkt. Kopparapu Ratna Kumari APPELLANT

Vs

Smt. Batchu Lakshmi and Others RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58
Transfer of Property Act, 1882 — Section 19

Citation : (2006) 6 ALD 249

Hon'ble Judges : C.V. Ramulu, J

Bench : Single Bench

Advocate : Vedula Srinivas, for the Appellant; M.S.R. Subrahmanyam, for the Respondent

Final Decision : Allowed

Judgement

C.V. Ramulu, J.—This Civil Revision Petition is filed under Article 227 of the Constitution of India being aggrieved by an Order dated 6-3-2006 made in E.A.No. 7 of 2006 in E.P.No. 6 of 2004 in O.S.No. 12 of 2003 on the file of the learned III Additional District Judge, Kurnool at Nandyal.

2. Petitioner is a third party to the suit proceedings in O.S.No. 12 of 2003 on the file of the learned III Additional District Judge, Kurnool at Nandyal. It is very interesting to notice that respondents 4 to 6 filed a suit for declaration of title and for recovery of possession of the suit schedule property. However, the suit was dismissed with costs. Therefore, defendant- decree holders (respondents 1 to 3 herein) filed E.P.No. 6 of 2004 to recover the costs awarded in the suit and sought for attachment and sale of schedule property. The same was resisted by filing E.A.No. 7 of 2006 by the petitioner herein.

3. It may be noticed that the petitioner herein is the mother of the plaintiffs in O.S. No. 12 of 2003. When her property was sought to be attached and put to sale, she filed the present E.A. No. 7 of 2006 under Order XXI Rule 58 of Civil Procedure Code. It is her case that the schedule property is bequeathed to her

by way of a registered will deed dated 21-6-1974, which was registered on 5-8-1974. Under the said will, the petitioner has only life interest and after her death, the judgment-debtors/plaintiffs (respondents 4 to 6) were entitled to succeed to the property. Since no interest is transferred in favour of respondents 4 to 6 under the will, they are entitled to the property after her death; as such, the property cannot be either attached or sold. It is the case of respondents 1 to 3 (decree-holders) that under the will, respondents 4 to 6 have a vested interest as defined u/s 19 of the Transfer of Property Act, which reads as under:

19. Vested interest.-Where, on a transfer of property, an interest therein created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

4. Once there is a vested interest created in favour of respondents 4 to 6, the same is also liable to be attached and sold. There is no bar for attaching such property and putting the same to sale for the purpose of realization of the decretal amount.

5. The Court below, after considering the contentions of both sides, held that respondents 4 to 6, admittedly, would get title over the property after the death of the petitioner-claimant. If for any reason, the attachment is raised, respondents 4 to 6, who have got the vested reminder may alienate the property; consequently, the attempts of respondents 1 to 3-decree holders to realize the decretal amount would prove futile. Aggrieved by the same, the present Civil Revision Petition is filed.

6. Heard both sides.

7. The only question that falls for consideration is when the petitioner has only life interest and respondents 4 to 6 are entitled for, though, a vested interest, whether before death of the petitioner, such property can be attached in execution proceedings like this.

8. It is an admitted fact that the petitioner was not a party to the suit at all nor she was impleaded in the E.P., but her property is sought to be attached on the ground that respondents 4 to 6 have vested interest in the property and the petitioner has got only a life interest; therefore, it can be attached. In fact, learned Counsel for respondents 1 to 3 contended that the petitioner has got a life interest in the schedule property and her sons i.e. judgment debtors (respondents 4 to 6) are having vested interest in the schedule property. As such, the contention of learned Counsel for the petitioner in the revision as well as in the claim petition before the lower Court is that since she got life interest in the schedule property, the vested interest of judgment debtors (respondents 4 to

6) cannot be proceeded with in execution and the property cannot be attached or sold.

9. It is also interesting to notice that the decree-holders did not proceed against respondents 4 to 6 for realization of the decretal amount. It is stated that they are all salaried persons and the costs awarded in the suit i.e. decretal amount can be easily recovered from them. Though respondents 4 to 6 are sound persons and capable of satisfying the decree, respondents 1 to 3 did not make any efforts for realization of the amount from them. Further, learned Counsel for the petitioner states that the parties herein are close relatives and they have contempt against each other being involved in the litigation and respondents 1 to 3 wanted to see that the property in question be attached and sold in Court auction. Be that as it may, there is no provision under the law, which permits the attachment and sale of the property in which the petitioner has got only a life interest and respondents 4 to 6 would succeed to the property after her death. May be, in a given case, it is attachable, but it cannot be sold. Learned Counsel for the respondents 1 to 3, when asked, was not able to bring it to the notice of the Court any provision permitting such attachment. In fact, if any such attachment and sale is permitted, the life interest of the petitioner would be marred. Petitioner has life interest to enjoy the property as she likes during her life time. Respondents 4 to 6 will get title over the property after the death of the petitioner only. If such sale is permitted, the wish of the testator of the will would be defeated, apart from the fact that there is no such provision under law permitting for attachment and sale of the property in which a person has got only life interest.

10. In support of his contentions, learned Counsel for respondents 1 to 3 relied upon the judgments reported in Rajes Kanta Roy Vs. Santi Debi, and Matimala Debi and Another Vs. Surendra Nath Mudi, . Rajes Kanta Roy Vs. Santi Debi, is a case where under the trust deed, the judgment-debtor has beneficial interest; therefore, it was held that such beneficial interest is attachable, provided it is vested interest and not a contingent interest. This decision deals with only the aspect of attachment and not sale. Thus, this Judgment has no application to the facts of the present case.

11. SM. Matimala''s case (supra) is a case where the testator granted estate to his widow for her life time and then to his daughter absolutely. The daughter died during the life time of the widow leaving her husband as her heir. The interest of husband in property is not mere expectancy of succession and is not exempt from attachment and sale. In this case, the right to the property vests absolutely in the daughter after the testator''s death and though a life interest is bequeathed to the widow, the interest of the daughter is not mere possibility, but a vested remainder. So long as the daughter is alive, her heir, i.e. the husband has only an expectancy of succession to the vested remainder, but after the death, it devolves on him by inheritance. The fact that the husband''s right depends upon the contingency, namely, the death of the widow makes no

difference, for a contingent interest is something different from a mere possibility of succession. The right to the property in question in the said case vested absolutely on the daughter on the testator''s death and though a life interest was bequeathed to the widow, her interest was not a mere possibility, but a vested remainder, which was an interest granted out of the original estate. The facts of the said case are altogether different from the facts in the instant case and the proposition laid down therein has no application to the present case. Therefore, the said decision also has no relevance to the facts of the present case.

12. For all the above reasons, I am of the opinion that the impugned Order passed by the trial Court is liable to be set aside and is accordingly set aside. Accordingly, the Civil Revision Petition is allowed . No order as to costs.