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(1982) 05 RAJ CK 0006

In the Rajasthan High Court

Case No : Civil Writ Petition No. 785/80

Smt. Gulab APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 14-05-1982

Acts Referred:

Rajasthan Land Revenue (Payment Credits Refunds and Recovery) Rules, 1958 — Rule 29, 54
Rajasthan Land Revenue Act, 1956 — Section 230, 257

Citation : (1982) WLN 144

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mahendra Bhushan Sharma, J.—One Kalu Ram stood surety for Madan Lal an Excise Contractor who was given Country Liquor contract on guarantee system in the year 1975 for a shop in Borunda. In relation to the dues against said Madan Lal with regard to the aforesaid Liquor contract the House of Kaluram the Surety was at attached under Ex. 1 dated August, 30, 1976. The petitioner who is the widow of said Kalu Ram has filed the writ petition in this Court for quashing the attachment of her house by the respondents and from restraining the respondents from recovering any amount from the petitioner''s properties on the basis of certificate issued against Madan Lal the Liquor contractor,

2. The facts relevant for appreciating the controversy in this writ petition are these:

3. Licence for country Liquor shop situated in Borunda, Tehsil Bilara for the year 1975-76 on guarantee system was given to one Madan Lal and Kalu Ham since deceased husband of the petitioner Smt. Gulab stood a surety for the said Madan Lal for the amount of Rs. 15,010/- and executed a surety bond in favour of the State. There was a shortfall in the guarantee amount to the extent of Rs. 4008. 41 ps. for the months from April, 1975 to August, 23, 1975 and besides that as a

result of re-auction of the Country Liquor shop of Borunda there was a loss of Rs. 5443/- The liability of Madan Lal, the licensee, was determined to the extent of Rs. 58051.41 ps. The District Excise officer, Jodhpur determined the aforesaid liability under his order dated August, 20, 1975 (Ex. 2) and in the aforesaid order also held that in case the recovery in whole or in part is not possible from Madan Lal then the amount should be recovered from the property of Kalu Ram the surety. The District Excise Officer on 8th February, 1980 issued a warrant of sale of property belonging to Kalu Ram authorising the Assistant Excise Officer, Jodhpur to sell the property belonging to Kalu Ram and attached on 20.9.79 for the dues amounting to Rs. 57239.97 ps. Sale proclamation was also issued.

4. The petitioner who is the widow of Kalu Ram the surety has challenged the attachment of her property as well as the recovery proceedings by sale of it on the following grounds:

(i) That the certificate of recovery is against Madan Lal s/o Sheo Karan Tak of Borunda and on the basis of this certificate, recovery proceedings could not be started by the District Excise Officer against Kalu Ram, husband of the petitioner, without coming to the conclusion on the basis of legal proceedings u/s 257 of the Land Revenue Act 1956 that Kalu Ram the surety is liable to pay the amount as a, surety.

(ii) The Collector did not issue any notice to Kalu Ram during his life time and no notice was issued to the petitioner after the death of Kalu Ram. Thus without a notice they finding, even if any, of the Collector, that Kalu Ram is liable to pay the amount of surety is without jurisdiction.

(iii) That the recovery proceedings are being taken in the name of Kalu Ram deceased husband of, the petitioner and as such, being against a dead person, are nullity in the eye of law.

(iv) That the recovery proceedings are not only arbitrary but are also malafide in as much as thought Kalu Ram under the surety bond had made himself liable to the extent of Rs. 15010/-, but the attachment and sale of the property belonging to Kalu Ram has been affected for the recovery of Rs. 57236.97 ps. the entire amount payable by defaulter Madan Lal.

(v) That u/s 40 of the Rajasthan Excise Act 1950 (for short herein after referred to as "the Act") the amounts payable by any person or his surety are recoverable as arrears of the Land Revenue and hence u/s 257 of the Rajasthan Land Revenue Act 1956 (for short as "the Land Reveuue Act") the recovering authority is bound to hold a proper enquiry as to whether a person has become liable as a surety before proceedings for recovery can be initiated against him.

5. Reply has been filed on behalf of the State to the effect that Kalu Ram did execute a surety bond Ex. 1 and it bears his signatures. Madan Lal the principal debtor had no property and as such, the surety was liable to pay the amount. According to the State, Kalu Ram under the surety bond under took to be liable

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for payment up to Rs. 15010/- in case principal debtor i.e. Madan Lal makes default in the payment of his dues. The liability of the surety is co-extensive with that of the principal debtor. It is further the case that for initiating the recovery proceedings against the surety it is not necessary to determine the liability when the liability of the principal debtor has been determined.

6. I have heard learned Counsel for the petitioner and the Additional Government Advocate. The contention of Mr. Purohit, the learned Counsel for the petitioner is that the recovery certificate is not against Kalu Ram and is only against Madan Lal and therefore, on the basis of this certificate recovery proceedings could not be started against Kalu Ram. He further contended that it was necessary before determining the liability of the surety, for the Recovery Officer to give a notice to the defaulter, which has rot been done in this case and there has been no service on Kalu Ram or on the petitioner of any notice issued by the Recovery Officer. u/s 40 of the Act all excise revenue including all amounts due to the State Government by any person on account of any contract relating to excise revenue, may without prejudice to any other mode of recovery, be recovered from person primarily liable to pay the same or his surety, if any, as arrears of Land Revenue or in the manner provided for the recovery of public demand by any Law for the time being in force. It is the case of the State that the recovery proceedings against surely namely Kalu Ram were taken under the Land Revenue Act, under which the amount is to be recovered as arrears of Land Revenue. A perusal of Ex. 1, the warrant of attachment of the property of Kalu Ram will show that it has also been issued under the Land Revenue Act, u/s 257-D of the Land Revenue Act, the provisions of this chapter (Collection of Revenue) with regard to the recovery of revenue or rent shall apply to all arrears of revenue or rent as well as sums of money recoverable u/s 256 and 257 as arrears of revenue due at the commencement of the Act. u/s 257 of the Land Revenue Act, every person who may have become a surety under any of the provisions of this Act or under any other enactment or any grant lease or contract where under the sum secured, is recoverable from principal as an arrear or revenue, shall, on failure to pay the amount or any portion thereof which he may have become liable to pay under the terms of his security bond, be liable to be proceeded against as if such amount or portion thereof were an arrear of revenue. As such on failure of the principal debtor of the amounts due against him under any enactment or contract the surety is liable to pay the amount and as such will be a "defaulter" for the purpose of the Land Revenue Act. Section 229 of the Land Revenue Act requires that when an arrear of revenue or rent becomes due, a writ of demand calling on the defaulter to pay the amount within a time there in stated or citation to appear on a date therein mentioned may issue. Section 228 of the Land Revenue Act provides that an arear of revenue or rent may be recovered by one or more of the processes prescribed therein. One of the process is by serving a writ of demand or a citation to appear on any of the defaulters and the other process is by sale of other immovable property of the defaulter. Under aforesaid Section 228, there is no provision for attachment of any immovable property

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other than a specific area, share, patti or estate in respect of which the arrear is due. One of the process for recovery of arrears is also by sale of other immovable property of the defaulter. u/s 237 of the Land Revenue Act, if an arrear cannot be covered by any of the process containing in Section 228 of the Act and if the defaulter owns, or has any interest in any other estate or any share in any other immovable property, the Collector may proceed against such estate or share or other immovable property as if it were the land on account of which the revenue of rent is due under the provisions of this Act. Thus by virtue of Section 237 of the Act the other immovable is such as if such property were land on account which the revenue or rent is due under the provisions Land Revenue Act. It is the duty of the recovery Officer to first determine that a surety has become liable to pay the amount under the terms of his surety bond and such liability can only be determined after notice to him. In the instant case, it is not disputed that Kalu Ram has died and no notice to Kalu Ram or the petitioner was ever given before liability of Kalu Ram under the surety bond was determined. Under Ex. 1 dated 30.8.1976, the District Excise Officer on whom powers of the Collector u/s 257 A of the Land Revenue Act have been conferred, under notification of the Revenue (c) Department, Government of Rajasthan dated 13, July 1971 asked the Excise Inspector, Bilara to attach the property of Kalu Ram on account of Rs. 57239.97 ps. an amount which was due against Madan Lal and cannot be said to be due against the surety, Kalu Ram because he undertook to pay the amount only upto the extent of Rs. 15010/- under the surety bond. Notice Ex. 5 dated 9.8.1977 was issued to Kalu Ram calling upon him to pay the amount of Rs. 15010/- for which he stood a surety and he was called to show cause against the recovery, but admittedly Kalu Ram had died earlier and as such the notice was issued to a dead man. It was not issued to the petitioner or to other legal representatives of the Kalu Ram. Again under Ex. 8, the warrant of sale property issued u/s 230 Land Revenue Act read with Rule 29 and 54 of the Rajasthan Land Revenue (Payment Credits Refunds and Recovery) Rules 1958 (short hereinafter) the Excise Officer, Jodhpur was directed to sell the property of of Kalu Ram the survey of the recovery of Rs. 57239.37 ps. against the sale proclamation which was also issued on February 8, 1980 goes to show that for the recovery of the aforesaid amount of Rs. 57,239.37 ps. the property of the Kalu Ram mentioned there in was to be sold. Thus when Kalu Ram stood surety only up to the extent of Rs. 15010/-his property for the recovery amount of Rs. 57,239.37 ps. could not have been attached nor a sale proclamation for sale of the property of Kalu Ram for the aforesaid amount could have been issued. As already stated earlier the liability of Kalu Ram the defaulter as a surety to Madan Lal was never determined after notice to him. Thus the principles of natural justice have also been violated and the attachment and the sale proclamation cannot be sustained.

7. In the result I allow the writ petition and quash the attachment of the property of Kalu Ram as well as the sale proclamation and the warrant of sale of his property issued by the District Excise Officer Jodhpur. The authorities shall be

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free to take recovery proceedings in accordance with Law against the property of the surety Kalu Ram in the light of observations made above, f he costs of this writ petition are made easy.

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