(1988) 01 AP CK 0006

In the Andhra Pradesh High Court

Case No : C.R.P. No. 1298/82

Smt. Narayanam Rajamani APPELLANT

Vs

Smt. P. Seetha and Others RESPONDENT

Date of Decision : 25-01-1988

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, 60(1)

Citation : (1988) 01 AP CK 0006

Hon'ble Judges : A. Seetharam Reddy, J

Bench : Single Bench

Advocate : K.V. Subrahamnya Narsu, for the Appellant; M. Lakshmana Sarma, for Respondents 1 to 5, for the Respondent

Final Decision : Dismissed

Judgement

A. Seetharam Reddy, J.—The point involved in this revision petition is whether the principle of res judicata can be allowed to over-reach the special or specific amendment brought about in the years 1976 to the CPC while enacting Sub-section (1-A) to Section 60?

2. The facts in brief are: The decree-holder is the Petitioner herein. Aggrieved against an Order of the Lower Court, which dismissed the petition filed for the execution of the decree for realisation of the amount by way of surrender of the insurance policy of the Judgment-debtor earlier attached under Order 38 Rule 5 Code of Civil Procedure, the decree-holder preferred this revision. In order to see whether the Lower Court''s Order is valid and within its jurisdiction, the provisions enacted in Sections 60(1)(kb) and 60 (1-A) Code of Civil Procedure, be noticed. The proviso to Section 60(1) and Clause (kb) read:

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

(a)....

....

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

Sub-section (1-A) reads:

Notwithstanding anything contained in any other Law-for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

3. Under the proviso to Section 60(1), there is an embargo on the statement or sale of various properties including "all moneys payable under a policy of Insurance on the Life of the Judgment-debtor". In other words, before Sub-section (1-A) was enacted, the amounts involved in insurance policy on the life of the Judgment-debtor could not have been attached, However, this could have been waived by the Judgment-debtor enabling the decree-holder to realise the amount. Faced with this situation, perhaps built on experience, the Legislature enacted deliberately the provision in Sub-section (1-A) which renders any agreement arrived at between the parties void, under which the benefit of any exemption is sought to be waived.

4. The Learned Counsel for the Petitioner, Sri K.V. Subrahmanya Narsu, contends that it is only a unilateral waiver and not bilateral as conceived by Sub-section (1-A) and, therefore, Sub-section (1-A) cannot be attracted. I apprehend, the contention is not well-founded. Any such construction if put on the language of Sub-section (1-A) would render nugatory the very object and policy laid down by the Legislature and the canon of construction being that any interpretation which seeks to stultify the very effect of special provision must not be resorted to, and the one which effectuates the purpose and intent must be adopted. I have no doubt whatsoever that the agreement postulated between the parties herein by which the Judgment-debtor necessarily be construed as implied bilateral agreement. In the case on hand, even assuming that the conduct of the judgment-debtor amounts to waiver, it is only because of the act of the decree-holder which seeks to attach the insurance policy illegally, must be held to have been accepted in silence by the Judgment-debtor; this is forbidden by the provisions enacted in Sub-section (1-A).

5. In the circumstances, the Petitioner-decree-holder will not be entitled to attach and realise the amount of the insurance policy. The contention is accordingly rejected.

6. It is next contended, construing the language employed in Section 60(1)(kb), that "a policy" means "only one policy" and, therefore, if there is any plurality of policy, Section 60(1)(kb) read with Sub-section (1-A) cannot be of any help to the Judgment-debtor. I apprehend this is misconceived as it is without any substance and merit. Figuratively though singular has been employed using the word ''a policy'', in its construction it must be necessarily extended to more than

one policy. Therefore, the contention which is baseless is rejected.

7. The revision petition is accordingly dismissed. No costs.

