

(2000) 04 KL CK 0023
In the High Court Of Kerala
Case No : C.R.P. No. 2748 of 1998

State of Kerala

APPELLANT

Vs

M.A. Jose and Another

RESPONDENT

Date of Decision : 05-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(3), 73, 73(3)

Citation : (2000) 3 CivCC 539

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : Muraleedharan Pillai, Government Pleader, for the Appellant; V. Giri, for 1st Respondent, C.G. Bindu and Ajitha, C.G. for 3rd Respondent and T.J. Thomas, for 4th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Hariharan Nair, J.—The revision Petitioner is the State. The first Respondent herein obtained a decree against one T.C. Thomas who is the second Respondent herein and in execution of that decree the properties of the second Respondent were sold for a sum of Rs. 2,01,000 in Court auction held on 8th March 1991. The second Respondent owed money to other creditors like Respondents 3 and 4 also. The fourth Respondent, therefore, filed E.P. 280/1991 seeking to recover a sum of Rs. 79,110. As there was balance amount after defraying the amount due to the decree holder, the claim was allowed and the sum of Rs. 79,110 transmitted to the Court concerned for payment to the creditor, viz. the decree holder therein. Thereafter the additional third Respondent herein who had obtained a decree against the second Respondent in O.S. 573/1990, filed an E.P. for recovery of a sum of Rs. 90,044.65. That was in 1992. It was thereafter that the State came forward with a claim that amounts are due to the State and that the State is entitled to priority in the matter of amounts available. In other words, the State contended that the amounts claimed by Respondents 3 and 4 could be allowed only if there was any balance left after the amounts due to the

State are recovered. The Court below considered the contention and found that the State's claim had no merit.

2. I have heard the Counsel for Respondents 1, 3 and 4. According to them, the question of priority does not arise in so far as the State is not even a decree holder and there is no E.P. filed by the State. It is also pointed out that the amounts due to the State are not in respect of Land Revenue and as such there is no question of priority.

3. The learned Government Pleader during hearing relied on the decision in Union of India Vs. Somasundram Mills (P) Ltd. and Another, to contend that the State has priority. That was a case where the property sold in execution by private decree holder had been attached by the State even earlier. In the present case the State has never attached the amount in question or the property that was sold in Court auction in the particular case. In the circumstances, the State cannot take shelter under the aforesaid decision.

4. Section 73 of the CPC provides for rateable distribution among the decree holders. According to this section, where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be rateably distributed among all such persons. Section 73(3) provides that nothing in this section affects the right of the Government.

5. The learned Counsel for the Respondents have rightly pointed out that the question of rateable distribution will come into existence only when there is claim by different decree holders. The term "decree holder" according to Section 2(3) of the CPC means any person in whose favour a decree has been passed or an order capable of execution has been made. In the instant case the State has no case that it has obtained a decree against the judgment debtor-second Respondent or against any other person for recovery of the amounts claimed. The State is thus not a decree holder and cannot hence make a claim for rateable distribution of the amounts. The State has also not filed any Execution Petition for attaching the amounts in question. of course for recovery of amounts due to the State, attachment is possible under the Revenue Recovery Act also. But here is a case where the property sold in Court auction had not been attached even in exercise of powers under the Revenue Recovery Act.

6. At the time when E.A. 149/1994 was filed by the State, the amounts demanded by the State were not even before the execution court, in so far as pursuant to E.P. Nos. 280/1991 and 104/1994 at the instance of Respondents 4 and 3 respectively, the balance amount after meeting the claim of the decree holder in the case had already been transferred to the credit of the said two decree holders.

7. Shaji v. Dinesan 1998 (2) KLT 917 is authority for the proposition that to claim

rateable distribution, a person should have applied for execution and even an attachment does not give him any right. A person who has merely obtained an attachment before judgment cannot put up a claim for rateable distribution unless he has obtained a decree and also made an application for execution. What is done u/s 73 is not a judicial act, but is only an administrative act and Court cannot go into the question whether the decrees are collusive or not. In the instant case the State has neither got an order of attachment nor had it applied for execution. In the circumstances, the Court below was justified in turning down the request of the State made through E.A. 149/1994. The impugned order does not suffer from any material defect. The revision is without merit. dismissed.