

(1988) 07 KAR CK 0050
In the Karnataka High Court
Case No : C.R.P. No. 2152/1988

T. Ramaiah

APPELLANT

Vs

K.S. Roopraj and Others

RESPONDENT

Date of Decision : 19-07-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 146

Citation : (1989) 1 KarLJ 34

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-This matter coming up for orders is disposed of finally after hearing the learned Counsel for parties.

2. The short question which falls for determination is whether the trial Court was right in permitting the Legal Representatives of the deceased decree-holder to come on record without insisting upon a Succession Certificate obtained under the Indian Succession Act as contended by the judgment-debtor.

3. The undisputed facts leading to this Revision Petition may be stated and briefly they are as follows:

One K.S. Roopraj obtained a decree against the Revision petitioner-judgment debtor and sued execution. During the execution proceedings, he died. His son S.R. Karanraj came on record in place of the deceased decree-holder and continued the proceedings in Execution Case No. 723 of 1987 on the file of the City Civil Judge, (7th Court) Bangalore City. The judgment-debtor, at that point of time, had no objection for the Legal Representative of the decree-holder to come on record in place of the decree-holder. The said Karanraj also passed away and therefore, the respondents 1 to 8 filed an application through the 1st respondent to come on record as Legal Representatives of late S.R. Karanraj and continue the execution proceedings. That was resisted by the Revision petitioner-judgment debtor inter-alia contending that that they have not established link between themselves and the deceased decree-holder and he also put forward the plea that the original decree-holder Roopraj died issueless and therefore,

Karanraj could not have been his son. That objection was not taken during the life time of Karanraj. However, while describing the relationship between the applicants and the decree-holder, the judgment-debtor made it the bone of his contention that they must be directed to produce a succession Certificate under the Indian Succession Act before they are permitted to come on record as his Legal Representatives. He also contended that the Legal Representatives cannot continue the execution proceedings having regard to rule 12 of Order 22 of Civil Procedure Code. But, over-ruling his objections, the executing Court has permitted the Legal Representatives to come on record. Aggrieved by the same, the present Revision Petition is preferred.

4. The majority of the High Courts in India have taken the view that rule 12 of Order 22 C.P.C., makes rules 3 and 4 of that Order inapplicable to execution proceedings and therefore, there cannot be abatement of execution proceedings. It is not read as a bar for the Legal Representatives to come on record under Order 22, Similarly majority of the High Courts have taken the view and rightly so in my opinion, that in any event Section 146 C.P.C. permits all persons claiming in a particular litigation whether be be a plaintiff or a defendant, petitioner or respondent to continue the proceedings in the name of the deceased petitioner or plaintiff or deceased defendant or respondent. In that view of the matter, the conclusion reached by the trial Court is correct that Legal Representatives may come on record and continue the execution proceedings. It is not necessary to insist upon a Succession Certificate as Hindus are not compelled by law to obtain Succession Certificate under the Indian Succession Act. They succeed by their own personal law and that the Court must recognise. In the event judgment-debtor dispute, an enquiry ought to have been held. But the order does not disclose that demand for an enquiry is made by the judgment-debtor in the executing Court.

5. However, in this Court learned Counsel for the petitioner drew my attention to Section 47 of Civil Procedure Code. Under Section 47(1)(c) of Civil Procedure Code it is incumbent upon the executing Court to decide the issue of the correctness of the claim of the Legal Representatives. That has not been done. It is unnecessary now to direct fresh enquiry in that behalf as no material has been placed by the judgment-debtor which can be taken note of seriously to dispute the claim of the decree-holders.

6. The only apprehension as pointed out by the learned Counsel is that some body who has no right may claim that he is entitled to come on record in the place of decree-holder and that should be prevented. Therefore, the proper thing to do is to direct the executing Court to call upon the Legal Representatives of the deceased decree-holder Karanraj to indemnify the judgment-debtor against the claims of third parties.

7. Subject to the above observation, this Revision Petition is dismissed as being without any substance.