
(2006) 07 KL CK 0081
In the High Court Of Kerala
Case No : A.S. No. 394 of 1994

Vijayarajan

APPELLANT

Vs

Kalavathy

RESPONDENT

Date of Decision : 05-07-2006

Acts Referred:

Civil Procedure Code, 1882 — Section 11
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 13, Order 20 Rule 13(1), Order 20 Rule 13(2), Order 48 Rule 3, Order 6 Rule 3
Insolvency Act, 1956 — Section 28, 28(2), 28(7), 3

Citation : AIR 2007 Ker 25 : (2006) 3 KLT 470 : (2006) 4 RCR(Civil) 48

Hon'ble Judges : R. Bhaskaran, J;K.T. Sankaran, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; P. Gopalakrishnan Nair, A.K. Srinivasan, M. Balagivindan, Biju John, K. Gopalakrishna Kurup and N. Nandakumara Menon, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Sankaran, J.—The question that arises for consideration in this Appeal is whether an Administration Suit, in which the relief prayed for is to appoint an Administrator cum Receiver for the properties of a living person for the purpose of distributing the proceeds of his assets among his creditors including the plaintiff, is maintainable before the civil court.

2. The plaintiff claims to be a creditor of the first defendant to the tune of Rs. 8 lakhs. The first defendant, C.K. Kalavathy, is a Hindu. She was running a press under the name and style "Kalanilayam Krishnan Nair Memorial Press" and other business concerns. The plaintiff contended that he advanced amounts to the first defendant for the purpose of her business. On settlement of accounts, it was agreed by the first defendant to pay Rs. 8 lakhs to the plaintiff and Exhibit A 19 deed was executed by the first defendant. It is stated in the plaint that the first defendant indulged in activities to defeat the rights of her creditors, namely, plaintiff and defendants 2 to 6. Plaint A schedule properties are the assets of the

first defendant. The debts due from the first defendant to the plaintiff and defendants 2 to 6 are shown in plaint B schedule. The plaintiff prayed to appoint an Administrator cum Receiver to take over the administration of the properties of the first defendant, to sell the same and distribute the proceeds among the creditors. It is relevant to point out that there is no averment in the plaint that the first defendant is an insolvent or that her assets are not sufficient to pay off her debts.

3. The first defendant contended that an Administration suit in respect of the assets of a living person is not maintainable. She also denied any transaction between her and the plaintiff as alleged in the plaint. The 2nd defendant, The South Indian Bank Limited, also contended that the Administration suit is not maintainable. The 2nd defendant bank obtained a decree against the first defendant for realization of money due to the Bank and execution proceedings were taken. The third defendant contended that he is a creditor of the first defendant and that the suit was filed as a result of collusion between the plaintiff and the first defendant.

4. The trial court found that the Administration suit is not maintainable in respect of the assets of a living debtor and dismissed the suit. Challenging the judgment and decree of the trial court, the appellant plaintiff raises the contention that such an Administration suit is perfectly maintainable in the civil court.

5. "Administration suit" is not defined in the Code of Civil Procedure. Order XX Rule 13 provides for passing decree in administration suit, which reads as follows:

13. Decree in administration suit:

(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

6. Forms 41 to 43 in Appendix A to the First Schedule of the CPC are the forms of pleadings in Administration suits. Form 41 deals with "Administration by creditor on behalf of himself and all other creditors" while Forms 42 and 43 deal

respectively with "Administration by specific legatee" and "Administration by pecuniary legatee". The suit as provided in Form 41 is for taking an account of the movable and immovable property of the deceased and for administration of the same under the decree of the Court and to satisfy the claim of the creditors of the deceased. Forms 42 and 43 also contemplate administration of the estate of a deceased person. Forms 17 to 20 in Appendix D to the First Schedule provide the forms of decrees in administration suits. Form 17 deals with preliminary decree in an administration suit and it is provided therein, in respect of creditor's suit, that account be taken of what is due to the plaintiff and all other creditors of the deceased. The decree to be passed as provided in Forms 17 to 20 is only in respect of the estate of a deceased person, and not in respect of the assets of a living person.

7. Sub-rule.(1) of Rule 13 of Order XX does not provide that the property which is the subject of administration should be the "property of a deceased person". But Sub-rule (2) specifically says so. The expression in Sub-rule (1) is "where a suit for an account of any property and for its due administration". The argument on the side of the appellant is that Sub-rule (1) contemplates a suit for administration in respect of the assets of a living person as well. The argument is founded on the absence of any indication in Sub-rule (1) that the property to be administered is that of a deceased person. The learned Counsel for the appellant relied on the decision of the Lahore High Court in Sheikh Mahbub Alam v. Razia Begum and Ors. AIR 1950 Lah 12. The subject matter of the suit in that case was that of a deceased Muslim. The suit was filed by the daughter of the deceased against her three brothers and a sister for the administration of the estate of the deceased father. The trial court held that such a suit for administration was not maintainable. The High Court, in Revision, held that the suit was maintainable. Though the question whether an administration suit is maintainable in respect of the assets of a living debtor was not involved in Mahbub Alam's case, it was held by the Lahore High Court thus:

It seems to me, if I may say so with great respect, that it would be incorrect to rely too much on Order 20 Rule 13 or the forms of complaints and decrees prescribed in Schedule I Civil P.C., for ascertaining the objects of an administration suit. Order 20, it will be noticed, bears the title "Judgment and decree" and is devoted to the form in which judgments should be delivered and decrees passed in particular cases. The forms, it has already been noticed, are not exhaustive, and Rule 13 itself enables the Court to give any directions that it thinks fit. "Administration" means management and disposal of an estate, whether it be that of a deceased person or of any other person. The power to entertain an administration suit is given not by Order 20 Rule 13, but by Section 9 of the Code, which provides that the Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred", and if a suit for the administration of an estate is not barred expressly or impliedly by any provision of law, it must be entertained. It would appear that an administration

suit need not necessarily relate to the estate of a deceased person. This conclusion may be drawn from the language of Sub-rule (1) of Rule 13 of Order 20, which speaks of a suit "for an account of any property and for its due administration under the decree of the Court" without any reference to a deceased person, and the force of this language is brought out specifically in Sub-rule (2) which makes a special provision for the "administration by the Court of the property of any deceased person."

8. The Bombay High Court held in *Gangaram Keval and Ors. v. Nagindas Khushaldas*: (1908) II ILR Bom 381 that a civil court cannot entertain a suit brought to administer the estate belonging to a living Hindu debtor. Justice Chandavarkar held thus:

No doubt, according to that section a Court has jurisdiction to try every suit of a civil nature, but treating this, as it no doubt is, as a suit of a civil nature, the question is whether the plaintiff has a right to a decree entitling him to have the property of a living person distributed against the wishes of his other creditors. If these are not willing, the plaintiff is not entitled to force his wishes upon them. These considerations do not apply to the estate of a deceased person.

Justice Heaton in his concurring judgment in *Gangaram Keval's* case, added:

This suit is to obtain the administration by the Court of the property of defendant No.1; that is to say, in effect, it is a suit to take the administration of his property out of the hands of the owner and to have that property administered, without regard to the owner's necessities or wishes. Stated in that form, it seems to me that very strong argument is needed to show that such a suit could lie, except under a special law such as that relating to insolvency; and nothing to my mind convincing has been put forward.

In *Gangaram Keval's* case, the Bombay High Court considered whether the suit was maintainable u/s 11 of the CPC 1882. Section 9 of the Code of 1908 corresponds to Section 11 of the Code 1882. The change made in Section 9 of the Code of 1908 is only that for the words "barred by any enactment for the time being in force" in the Code of 1882, the words "either expressly or impliedly barred" were substituted.

9. In *Black's Law Dictionary* (sixth Edition), dealing with "Administration of Estates", it is stated: "The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, performed under the supervision of a court, by a person duly qualified and legally appointed, and usually involving: (1) the collection of the decedent's assets; (2) payment of debts and claims against the estate; (3) payment of estate taxes; (4) distribution of the remainder of the estate among those entitled thereto. The administration of an estate runs from the date of an individual's death until all assets have been distributed and liabilities paid. Such administration is conducted by an administrator or an executor."

10. The Law Lexicon (by P. Ramanatha Aiyar - Reprint Edition 1992), defines "Administration", "Administration suit" and "Administrator" as follows:

Administration: A term applied broadly to denote the management of an estate by a person appointed by authority of law to take charge thereof in place of the legal owner. (Bouvier). The management and disposal of the estate of an intestate, or of a testator, having no executor; also, in the larger sense, management, etc., by an executor; the right of management, conferred by what are called letters of administration. (Kendrick).

Administration suit: A suit brought by any one interested, for administration of a decedent's estate when there is doubt as to its solvency.

Administrator: means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

11. A creditor is entitled to institute proceedings under the Insolvency Act (Act 2 of 1956) if the debtor has indulged in any act of insolvency and the conditions u/s 9 are made out. Section 3 of the Insolvency Act provides what court shall have jurisdiction under the Act. 4 and 5 of the Insolvency Act are relevant in this context and are extracted below for easy reference.

4. Power of Court to decide all question arising insolvency:

(1) Subject to the provisions of this Act, the Court shall have full power to decide all questions whether of title or priority, or of any nature whatsoever, and whether involving matters of law or of fact, which may arise in any case of insolvency coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Subject to the provisions of this Act and notwithstanding anything contained in any other law for the time being in force, every such decision shall be final and binding for all purposes as between; on the one hand, the debtor and debtor's estate and, on the other hand, all claimants against him or it and all persons claiming through or under them or any of them.

(3) Where the Court does not deem it expedient or necessary to decide any question of the nature referred to in Sub-section (1), but has reason to believe that the debtor has saleable interest in any property, the Court may without further inquiry sell such interest in such manner and subject to such conditions as it may think fit.

5. General powers of Courts:

(1) Subject to the provisions of this Act, the Court, in regard to proceedings under this Act, shall have the same powers and shall follow the same procedure as it has and follows in the exercise of original civil jurisdiction.

(2) Subject as aforesaid, the High Court and the District Courts, in regard to

proceedings under this Act in Courts subordinate to them, shall have the same powers and shall follow the same procedure as they respectively have and follow in regard to civil suits.

Sub-section (2) of Section 28 of the Insolvency Act provides that on making of an order of adjudication, the whole of the property of the insolvent shall vest in the Court or in a receiver and shall become divisible among the creditors; and that no creditor to whom the insolvent is indebted in respect of any debt provable under the Act shall during the pendency of the insolvency proceedings have any remedy against the property of the insolvent in respect of the debt, or commence any suit or other legal proceeding, except with the leave of the Court. Sub-section (7) of Section 28 states that an order of adjudication shall relate back to, and take effect from, the date of the presentation of the petition.

12. The Insolvency Act provides for Administration of the property of the debtor. The court may appoint an interim receiver and/or a receiver. The Insolvency Act also provides for distribution of the property of the insolvent. The scheme of the Insolvency Act shows that it is a complete Code in itself. If the debtor is really insolvent and is liable to be adjudged an insolvent, the remedy of the creditor is to initiate proceedings under the Insolvency Act. A complete and effective remedy is provided in the said Act for enforcement of the rights of the creditor. In such fact situation, the creditor is not entitled to file an administration suit before the civil court. It is true that the creditor could institute a suit in the civil court for recovery of money against the debtor and execute the decree in any manner provided in the Code of Civil Procedure. The only bar for a creditor to institute such a suit is the one provided u/s 28(2) of the Insolvency Act.

13. It is well settled that exclusion of jurisdiction of the civil court is not to be lightly inferred. It is also well settled that where a statute gives finality to the orders of the Special Tribunals, jurisdiction of the civil courts must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. See: *State of Andhra Pradesh Vs. Manjeti Laxmi Kantha Rao (D) By L.rs. and Others*, ; *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, ; *S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal and Others*, ; *Anwar Vs. First Additional District Judge, Bulandshahr and Others*, . The Insolvency Act gives finality to the orders passed by the Court and provides an effective remedy to the creditor. We are of the view that in cases where the debtor could be proceeded against under the Insolvency Act, a suit for administration is not maintainable before the civil court.

14. Now let us take the instance where the debtor has not done any act of insolvency and where the assets of the debtor are quite sufficient to discharge all his debts. In such a case, the debtor, as any other owner of property, is entitled to deal with his properties, if it does not amount to a fraudulent transfer. An administration suit is to obtain administration by the Court of the property of the debtor. The rights of the debtor to prefer any creditor, to give priority in the discharge of various debts, to meet his necessities and wishes would be

hampered by the intervention of the court in such a suit. A creditor's remedy in such a fact situation is to file a suit for recovery of his debt and not to file a suit for administration. Section 73 of the CPC provides for rateable distribution of the assets held by Court among all the creditors who have obtained decree for money against the same judgment debtor. In our view, the remedy provided u/s 73 for rateable distribution also points to the conclusion that an administration suit to administer the assets of a living debtor is not maintainable, though the remedy u/s 73 would not be as much effective and comprehensive as in an administration suit.

15. We are in respectful agreement with the view taken by the Lahore High Court in Mahbub Alum's case that the forms of complaints and decrees prescribed in Schedule I of the CPC are not exhaustive and that the jurisdiction to entertain an administration suit is given not by Order 20 Rule 13 but by Section 9 of the Code of Civil Procedure. The same view was taken by the Gujarat High Court in Nazarali Kazamali and Others Vs. Fazlanbibi and Others, . Rule 13 of Order XX lays down only a procedure. It is not substantive. That the Forms provided in the Schedule are not exhaustive is clear from, "Rule 3 of Order VI and Rule 3 of Order XLVIII. Rule 3 of Order VI states that the forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings. Rule 3 of Order XLVIII provides that the forms given in the Appendices, with such variation as the circumstances of each case may require, shall be used for the purposes therein mentioned.

16. Though, as stated above, we agree with the dictum laid down by the Lahore High Court in Mahbub Alam's case, we are not inclined to take the view that an Administration suit is maintainable against a living debtor for the administration of his assets, for the reasons mentioned above. It was held by the Lahore High Court that an administration suit need not necessarily relate to the estate of a deceased person. The decision of the Lahore High Court was followed by Gujarat High Court in Nazarali's case. The abovementioned cases decided by the Lahore and Gujarat High Courts arose out of suits for administration of the estates of deceased persons and the question of maintainability of an administration suit against a living debtor did not directly arise for consideration.

17. Sub-rule (1) Rule 13 of Order XX contemplates a suit for "an account of any property and for its due administration under the decree of the Court" while Sub-rule (2) deals with administration of the property of any "deceased person". Sub-rule (2) specifically provides that all persons who would be entitled to be paid out of the property of the deceased person, "may come in under the preliminary decree and make such claims against the same as they may respectively be entitled to by virtue of the Code". Such a provision enabling all the other creditors other than the plaintiff to "come in" under the preliminary decree is absent in Sub-rule (1). The absence of such a provision in Sub-rule (1) would lead us to arrive at the conclusion that the administration suit coming under Sub-rule (1) does not take in a suit for administration of the assets of the debtor for

the benefit of all the creditors. The expression "such other directions" in Sub-rule (1) would not include a direction to administer the property of the debtor to the benefit of all his creditors as provided under Sub-rule (2). This distinction was not taken note of by the Lahore High Court in Mahbub Alam's case and by the Gujarat High Court in Nazarali's case.

For the reasons mentioned above, we follow the dictum laid down by the Bombay High Court in Gangaram Keval's case ILR XXXII Bombay 381 and hold that a civil court has no jurisdiction to entertain an administration suit to administer the assets belonging to a living debtor and to distribute the proceeds to his creditors. The finding arrived at by the trial court that the suit is not maintainable is hereby confirmed and the Appeal is dismissed, however, without any order as to costs.