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Muthappa Gowda Vs. Putta Master

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Court : Karnataka

Decided On : Feb-17-1976

Reported in : AIR1977Kant89; ILR1976KAR849; 1976(1)KarLJ333

Judge : V.S. Malimath, J.

Acts : Karnataka Agricultural Debtors' (Temporary Protection) Act, 1973 - Sections 3; Limitation Act - Schedule - Article 136

Appellant : Muthappa Gowda

Respondent : Putta Master

Advocate for Def. : P. Ganapathy Bhat, Adv.

Advocate for Pet/Ap. : K. Krishna Bhat, Adv.

Judgement :

1. This is Decree-Holder's second appeal against the order of the Civil judge, Puttur, in Ex. A. No. 8 of 1975 reversing the order of the Principal Munsiff, Puttur, in Ex. Case No. 114 of 1974 (O. S. No. 354 of 1968). The appellant obtained A money decree in O. S. No. 354 of 1968 on the file of the Munsiff, Puttur, an 28th of November 1968. He sought execution of the said decree in Ex. Case No. 114 of 1974 on 27th May 1974 by sale of an agricultural land belonging to the judgment-debtor. The judgment-debtor resisted the execution relying upon the provisions of the Karnataka Act No. 25 of 1973. The Karnataka Agricultural Debtors' (Temporary

Protection) Act, 1973 (hereinafter referred to as the Act). The benefit of the Act is available only to an agricultural debtor defined in sub-section (2) of Section 2 of the Act The decree-holder took the stand that the judgment-debtor is not an agricultural debtor as defined in the Act. The Executing Court upheld the contention of the decree-holder and came to the conclusion that the judgment-debtor is not an agricultural debtor. Hence, objection of the judgment-debtor was overruled and the schedule properties were directed to be sold in execution of the said decree. That order was reversed on appeal by the learned Civil Judge, Puttur, who held that the respondent-judgment-debtor is an agricultural debtor and therefore entitled to the benefit of the said Act. Relying upon Section 3 of the Act he dismissed the execution case. It is the said order that is challenged by the decree-holder in this Execution Second Appeal.

2. Section 3 of the Act provides as follows:

'Notwithstanding anything contained in any law or judgment or order of any court or competent authority, all proceedings in execution of any decree or order of any court or competent authority for the sale of any land held by an agricultural debtor for realisation of any debt due by him shall, for a period of two years from the commencement of this Act, be stayed'

The said Act came into force on 29th November 1973 whereas the Execution Petition was filed after the Act came into force, on 27-5-1974. What Section 3 of the Act provides is for staying all proceedings in execution of decrees or orders by sale of any land held by an agricultural debtor for a period of two years from the commencement of the Act. Section 3 does not prohibit presentation of filing of Execution Petitions to appropriate courts for execution of the decrees or orders. All that it contemplates is stay of all proceedings in execution for a period of two years from the commencement of the Act if the said proceedings for execution pertain to the sale of any agricultural land for realisation of any amount due by the agricultural debtor.

3. It is not Possible to accede to the contention of Sri P. Ganpathy Bhat, learned counsel for the respondent, that during the Period of two years contemplated by Section 3 Of the Act the statute prohibits filing of execution Petitions in which the

sale of, land held by an agricultural debtor is sought for realisation of any debt due by him. Sri Bhat, invited my attention to Section 4 of the Act which provides that for the purpose of limitation, the period during which the proceedings are stayed by the Act shall be excluded It was contended that the said provision will be rendered nugatory if Section 3 is interpreted as not prohibiting the filing of execution for sale of any land held by an agricultural debtor. Article 136 of the Limitation Act, for instance, prescribes period of limitation of 12 years for filing the execution petitions. Having regard to the provisions of Section 4 the decree-holder is entitled to add to the said period of 12 Years the period during which the proceedings in execution of the decree or orders were stayed under the Act. Hence, it is obvious that Section 4 will not be rendered nugatory if Section 3 of the Act is understood as only having effect of staving further proceedings in execution of the decrees or orders and not prohibiting filing If execution petitions. I am therefore clearly of the opinion that the court below was wrong in dismissing the execution case No. 114 of 1974. What the learned civil judge should have done was to direct the Executing Court to stay the execution petition in accordance with Section 3 of the Act.

4. For the reasons stated above, this appeal is partly allowed. The order of the learned Civil judge setting aside the Order of the Executing Court and holding that the respondent is a debtor as defined in the Act is affirmed. The order of the learned civil judge is set aside only in so far as it pertains to the dismissing of execution case No. 114 of 1974. The Executing Court is directed to retain the execution case No. 114 of, 1974 and dispose of the same in accordance with law after the expiry of the period of statutory stay. No costs.

5. Appeal partly allowed.

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