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Rangamma Vs. Appaji Murthy

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Court : Karnataka

Decided On : Aug-21-1987

Reported in : ILR1988KAR1485

Judge : Venkatachala, J.

Acts : Code of Civil Procedure (CPC), 1908 - Sections 60(1)

Appeal No. : C.R.P. No. 3697 of 1987

Appellant : Rangamma

Respondent : Appaji Murthy

Advocate for Pet/Ap. : M.S. Purushothama Rao, Adv.

Disposition : Revision petition dismissed

Judgement :
ORDER

Venkatachala, J.

1. Order dated 18th July 1987 made in a suit by the Additional Civil Judge at Mandya raising an attachment which had been made by it respecting Rs.15,000/- of Death-cum-Retirement Gratuity payable to a retired Primary School Teacher of the State Government, is questioned in this revision petition.

2. Petitioner-1 is the wife and petitioners-2 to 4 are the daughters of the respondent, a retired school teacher. They filed a suit in the Court of Civil Judge at Mandya in the year 1983 against the respondent seeking grant of a decree for maintenance in their favour. In that suit, they sought for attachment of the Death-cum-Retirement Gratuity payable to the respondent (defendant in the suit) and in the hands of the Deputy Director of Public Instructions, Mandya. The Court below ordered its attachment. The Deputy Director of Public Instructions, Mandya, made an application in that suit seeking raising of that attachment, urging inter alia, that the Gratuity allowed to a pensioner of the Government and payable to him could not have been attached as the same was exempted from attachment under Clause (g) of the proviso to Sub-section (1) of Section 60 of the Code of Civil Procedure, 1908 (for short 'the Code'). The Court allowed that application and raised the attachment by the order under revision.

3. Sri M. Purushothama Rao, learned Counsel for the petitioners, urged the following objections against the order of the Court, by which attachment made earlier is raised.

(i) Attachment of the gratuities since was ordered for recovery of maintenance amount payable to the petitioners, the exemption provided under Clause (g) of the proviso to Sub-section (1) of Section 60 of the Code was not attracted;

(ii) The respondent himself since had no objection for payment of a sum of Rs.5,000/- out of the gratuity amount to the petitioners, the attachment could not have been raised at least respecting that sum of Rs.5,000/- ; and

(iii) The Deputy Director of Public Instructions did not have any locus standi to make an application for raising the attachment, particularly when, in the proceedings preliminary to the suit, namely, forma pauperis proceedings, initiated by the petitioners, the State Government was not a party.

4.1 shall now deal with the above objections seriatim

Re : Objection (i) :

Clause (g) of the proviso to Sub-section (1) of Section 60 of the Code exempts from attachment the gratuities allowed to pensioners of the Government. There is no provision in the Code which provides by way of an exception enforcement of order or decree relating to payment of maintenance by attachment of gratuities nor was any such provision brought to my notice by the learned Counsel, Hence, the order of the Court below raising attachment of Death-cum-Retirement Gratuities payable to respondent cannot be regarded as one made contrary to law.

Re : Objection (ii) :

Section 60(1-A) inserted into the Code by Section 23 of Act 104/76, when states that 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, it cannot be held that the expression of willingness of the respondent-pensioner to pay a sum of Rs.5,000/- out of the gratuities payable to him could be held against him. In other words, Sub-section (1-A) of Section 60 when makes it obvious that the benefit of exemption from attachment of gratuities of a pensioner granted under Clause (g) of the proviso to Sub-section (1) of Section 60 cannot be waived, no person can claim the benefit of attachment on the ground that the pensioner concerned has no objection for gratuities payable to him being attached.

Be : Objection (iii) :

The proviso to Sub-section (1-A) of Section 60 read with Clause (g) prohibits attachment of gratuities payable to a pensioner of the Government. If the gratuities allowed to a pensioner in the hands of the Deputy Director of Public Instruction is attached in contravention of the provision in Clause (g) of the proviso to Sub-section (1) of Section 60, if anything such officer performed an implied legal duty, when he sought the raising of the attachment. Mere fact that, some time has elapsed between the date of attachment and the date of making the application for raising the attachment, cannot make any difference as to the performance of duty by the Deputy Director of Public Instruction in getting the attachment raised inasmuch as such attachment would continue to subsist if not got raised.

5. Hence, I dismiss this Civil Revision Petition.

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