

Merry Muttu Vs. Tahsildar

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Court : Karnataka

Decided On : Jan-15-1986

Reported in : ILR1986KAR1259; 1986(2)KarLJ1

Judge : Rama Jois and Ramakrishna, JJ.

Acts : Karnataka Debt Relief Act, 1980 - Sections 3 and 4

Appeal No. : W.P. No. 21968 of 1982

Appellant : Merry Muttu

Respondent : Tahsildar

Advocate for Def. : B.M. Krishna Bhat, Adv. for R-2

Advocate for Pet/Ap. : B. Rangaswamy, Adv. for Kesvy & Co.

Judgement :

ORDER

Rama Jois. J.

1. This Writ Petition is presented by the petitioner praying for quashing the order of the Taluka Magistrate and Tahsildar, Hunsur under the provisions of Karnataka Debt Relief Act, 1980.

2. The facts of the case in brief are as follows :

The 2nd respondent made an application before the Taluka Magistrate Hunsur under Section 4 of the Act stating that the house belonging to her mother had been mortgaged in the year 1951, in favour of the petitioner as security for repayment of debt of Rs. 250/- and that as she was a debtor as defined under the Act she was entitled to a declaration that the debt stood discharged and also for a further direction for re-delivery of possession of the house to her. The Tahsildar granted that application. Aggrieved by the order the petitioner has presented this petition.

3. In the course of the order, the Tahsildar stated that the petitioner accepted that there was a mortgage and requested for a month's time to deliver possession. In the Writ Petition there is a clear statement made by the petitioner that she neither accepted the debt nor she agreed to deliver the possession of the house after one month. The above averment made in the Writ Petition has not been controverted by any statement of objections filed on behalf of the respondent. It is also unlikely that she would have admitted the claim of the 2nd respondent. Therefore, we have to proceed on the basis that she had not admitted the claim.

4. The Writ Petition has been referred to a Division Bench, in view of the point raised by the petitioner that the house property belonged to the mother of the 2nd respondent, and it was her mother who mortgaged the said property in favour of the petitioner in the year 1951, and therefore the 2nd respondent as a legal representative of her deceased mother was not entitled to make an application under the provisions of the Act, as the Learned Judge was of the view that the two Judgments rendered by Learned Single Judges which supports the contention of the petitioner required re-consideration.

5. The first case is Rame Gowda v. Sarojamma, ILR (Karnataka) 1980 (1) 67 = 1980(1) KLJ 54. In that case the claim under the provisions of the Act was made by a legal representative. There was no dispute that the debtor had died before the commencement of the Act. The Learned Judge hold that having regard to the wording of the Act the relief was given only to a debtor and not to his legal representatives and therefore when admittedly the debtor had died before the commencement of the Act the application made by the legal representative was

not maintainable. A similar view has been taken by another Learned Judge in *Rayappa Thimmappa Hulekal v. Annapurnabai*, ILR 1985 KAR 585. However, there are observations in the latter Judgment to the effect that even if the debtor died after the coming into force of the Act the position would be the same.

6. In order to appreciate the question arising for consideration, it is necessary to set out the provisions of Clauses (a) & (b) of Section 3 of the Act. It reads :

'3. Relief from indebtedness : Notwithstanding anything contained in any law for the time being in force or in any contract or instrument having force by virtue of any law or otherwise and save as otherwise expressly provided in this Act, with effect on and from the date of commencement of this Act

(a) every debt incurred by a debtor before the date of commencement of this Act and payable by him to his creditor on such date shall be deemed to be wholly discharged;

(b) no Civil Court shall entertain any suit or other proceeding against the debtor or his surety for the recovery of any amount of such debt;

Provided that where any suit or other proceeding is instituted jointly against a debtor and some other person, other than a surety, nothing in this Section shall apply to the maintainability of such suit or proceeding in so far as it relates to such other person'.

(Underlining by us)

The effect of Clause (a) of Section 3 is that a debt incurred by a debtor before the commencement of the Act shall be deemed to be wholly discharged with effect from the date of commencement of the Act. The Act is intended to give relief to persons belonging to weaker sections of society who fall within the definition of the word debtor as defined in the Act) against indebtedness. That relief enures to a debtor immediately on the commencement of the Act. The wording of Clause (a) also shows that the relief given is to the debtor personally in respect of a debt payable by him to a creditor immediately before the date of commencement of the Act, Therefore the view taken in both the cases to the effect that if a debtor had

died before the commencement of the Act, the legal representative cannot make any application claiming relief under the provisions of the Act in respect of a debt payable by a debtor is correct. To this extent we are entirely in agreement with the views expressed in the two decisions.

7. However, the interpretation of the section in Rayappa's case² to the effect that even if a debtor died after the commencement of the Act, the provisions of the Act, the provisions of the Act cannot ensure to the benefit of the legal representatives, in our view is not correct. Having regard to the wording of the section, the relief against indebtedness accrues to the benefit of a debtor from the date of commencement of the Act. Therefore, if a debtor was alive on the date of the commencement of the Act, the benefit accrues to him. If for any reason in a given case the debtor dies before or after making an application before the competent authority, or dies after the application is granted or injected when the matter is pending before the High Court, it makes no difference for, the relief stands granted on the commencement of the Act. Therefore, in our opinion if a debtor was alive on the date of the commencement of this Act and dies subsequently either before making an application seeking relief under the provisions of the Act or after making an application, his Legal Representatives would be entitled to the benefit of the Act provided they prove that the deceased debtor was a debtor as defined under the Act. What is required to be decided by the authorities concerned is the status of the debtor and not of his Legal Representatives. If they prove that the person who had incurred the debt was a debtor as defined under the Act and therefore by the force of the provisions of the Act the debt due from him stood discharged and the mortgage stood redeemed, in a suit or any other proceeding in which the said debt is sought to be recovered, they are entitled to claim the benefit which was due to the debtor on the date of the commencement of the Act. Similarly they can also seek relief at the hands of the Competent Authority under Section 4 of the Act which the debtor could have secured from the said Authority.

8. Coming to the facts of this case it is not clear from the order of the Taluka Magistrate whether the mother of the 2nd respondent died before the commencement of the Act or after the commencement of the Act. If the mother of the 2nd respondent had died before the commencement of the Act there is no

other alternative for the Taluka Magistrate to dismiss the application of the 2nd respondent. If, bow-ever, it is established that the mother of the 2nd respondent died after the commencement of the Act then it is necessary for the Taluka Magistrate to go into the merits of the case and to decide as to whether the mother of the 2nd respondent was a debtor as defined under the Act and if so to give relief, to which she was entitled to, to the 2nd respondent. As far as the merits of the case is concerned it should be observed that the Tahsildar proceeded on the basis that the petitioner admitted the claim and agreed to redeliver the property whereas the petitioner has filed a statement on oath that she did not agree. Therefore, it is necessary for the Taluka Magistrate to go into the merits of the case if he finds that the mother of the 2nd respondent died after the commencement of the Act.

In the result, we make the following :

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