D.V. Krishna Murthy Vs. P. Viswanath

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Court : Andhra Pradesh

Decided On : Mar-15-1993

Reported in : AIR1994AP43; 1993(2)ALT184

Judge : Radhakrishna Rao, J.

Acts : Code of Civil Procedure (CPC), 1908 - Order 38, Rule 5; Partnership Act, 1932 - Sections 25 and 49

Appeal No. : Civil Revn. Petn. No. 2271 of 1989

Appellant : D.V. Krishna Murthy

Respondent : P. Viswanath

Advocate for Def. : N. Ram Mohan Rao, Adv.

Advocate for Pet/Ap. : P.V. Subba Rao, ;R.V. Prasad and ;R.V. Nagabhushanarao, Advs.

Judgement :
ORDER

1. This revision is directed against the order passed by the District Munsif, Hindupur in I. A. No. 189/89 in O.S. No. 24/ 89. The suit was filed against the firm and its partners. Pending disposal of the suit, an application was filed under Order 38, Rule 5, C.P.C., to attach the properties of one of the partners i.e., the third

defendant, who is the petitioner herein. After counter was filed, the lower court ordered attachment before judgment. Aggrieved by the said order, the present revision is filed.

2. Sri R. V. Prasad, learned counsel for the petitioner contended that in case the partnership firm falls in debts, the properties of the individual partners cannot be attached before judgment. In support of the above contention, he relied upon S. 49 of the Indian Partnership Act, which reads as follows:--

'49. Payment of firm debts and of separate debts:-- Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be appliedin payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.'

3. In view of the above provisions, S. 49 cannot come in aid of the petitioner herein, who is 3rd defendant, to contend that before the decree has been passed, the question of attaching the property does not arise.

4. Section 25 of the Indian Partnership Act reads as follows:--

'25. Liability of a partner for acts of the firm:-- Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.'

In the case of partnership, each partner is liable. So when each partner is liable, in the event of passing of a decree and in the event of the apprehension of the plaintiff that one of the partners is screening away the property and is removing the same from out of the jurisdiction of the court, and on enquiry, the court is Competent to pass an order under O.38, R. 5, C.P.C. In the instant case also, the third defendant, who is the petitioner herein, was impleaded as a party in the main suit also. So, when he is a partner and when he is also signatory to the promissory note and when a suit is filed against all the partners, the Court is competent to pass an order under O.38, R. 5, C.P.C., by following the procedure duly contemplated therein. Therefore, there is neither illegality nor irregularity in the order passed by the lower court.

5. The revision petition is dismissed, accordingly. No costs.

6.Revision dismissed.