

Basanta Kumar Das Vs. Smt. Lakshmi Priya Dasi and anr.

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Court : Orissa

Decided On : Mar-07-1988

Reported in : AIR1988Ori269; 65(1988)CLT529

Judge : D.P. Mohapatra, J.

Acts : [Succession Act, 1925](#) - Sections 214

Appeal No. : Second Appeal No. 196 of 1979

Appellant : Basanta Kumar Das

Respondent : Smt. Lakshmi Priya Dasi and anr.

Advocate for Pet/Ap. : Akhil Mohapatra, Adv.

Disposition : Appeal allowed

Judgement :

D.P. Mohapatra, J.

1. In this appeal the defendant in T.M.S. No. 14 of 1978-II of the court of the Munsif, Balasore has challenged the judgment and decree of the lower appellate court confirming those of the trial court decreeing the plaintiffs' suit.

2. The question of law that arises for consideration is whether the plaintiffs could maintain the suit without filing a succession certificate in accordance with the

provisions under Section 214 of the Indian Succession Act.

3. The plaintiffs, daughters of Mani Sethi, who died on 26-2-1971 filed the suit for realisation of Rs. 1270/- on the allegations, inter alia, that the defendant had taken a loan of 20 quintals of paddy from their father and executed a mortgage bond (Ext. 1) agreeing to pay interest at the rate of 9% per annum and to make over possession of the land. It was further stipulated in the document that the principal loan amount and the interest shall be adjusted from the usufructs of the land within 5 years. Thereafter, the loan would stand discharged and the defendant would get back possession of his property from the creditor. In case of default of any of the conditions embodied in the document, the creditor would be at liberty to recover his dues through court. It was the further case of the plaintiffs that Mani Sethi remained in possession of the land for a year and adjusted Rs. 250/- from the yield of that year. He died during the next year and the plaintiffs possessed the property as his heirs and successors. But the defendant forcibly cut away paddy crops from the land and dispossessed them. Therefore, the plaintiffs initially filed a money suit to recover damages, which was subsequently converted into a mortgage suit by amendment of the pleadings.

4. The defendant refuting the case of the plaintiffs, asserted that he had taken a loan of 16 maunda of paddy and Rs. 200/- in cash. He however, admitted to have executed a bond for Rs. 1000/-. According to the defendant, Mani Sethi never took possession of the land. It was agreed between them that the defendant will cultivate the land as a tenant under him and he would pay Raj Bhag to Mani Sethi which would be adjusted towards the loan. From the yield during 1970 the defendant paid 2 pautis and 2-1/2 gaunis of paddy as Raj Bhag and a proportionate share of the straw. In 1971 and 1972, the crop condition being very bad he could not make any payment. The defendant challenged maintainability of the suit on the ground of non-compliance of Section 8 of the Orissa Money Lenders' Act and Section 214 of the Succession Act.

5. The trial court on consideration of the evidence placed before it, decreed the suit holding inter alia, that the defendant incurred a loan of 20 quintals a paddy valued at Rs. 1000/- from Mani Sethi and executed a registered deed of mortgage

dt. 17-6-1970 (Ext. 1); the defendant failed to establish his claim of holding the mortgage land as bhag tenant under the mortgagee; the plaintiffs were not able to possess the land from 1971 to 1974 and after adjusting a sum of Rs. 250/-towards appropriation of the crops during the year 1970, the defendant was liable for repayment of Rs. 1000/- with interest at the rate of 9 per cent per annum to the plaintiffs. On the question of maintainability of the suit the trial court held that Mani Sethi could not be said to be carrying on money lending in regular course of business. Therefore, Section 8 of the Orissa Money Lenders Act had no application to the transaction. Regarding non-compliance of Section 214 of the Succession Act, the court took the view that a suit for recovery of the usufructuary mortgage is not a suit for recovery of money due under a contract and hence it does not come within the purview of the said section. On these findings the trial court decreed the suit preliminarily in part and directed the defendant to pay Rs. 1000/-with interest accrued thereon at the rate of 9 per cent per annum with effect from 17-6-71 after deduction of Rs. 250/- out of the total sum due to be paid by him to the plaintiffs within a period of six months.

6. The lower appellate court confirmed all the findings of the trial court and dismissed the appeal. Regarding applicability of Section 214 of the Succession Act to the case, the court took the view that though all the conditions precedent for application of Section 214 of the Act are satisfied in the case, since the debt in the case was on a mortgage bond and was not a 'simple debt' the provisions have no application and the plaintiffs cannot be compelled to produce succession certificate to obtain a decree in their favour.

7. As noticed earlier, the main ground of attack of the learned counsel for the appellant is based on non-compliance of the provisions of Section 214 of the Succession Act. The said section reads as follows : --

'214 : Proof of representative title a condition precedent to recovery through the courts of debts from debtors of deceased persons.

(1) No court shall -

(a) pass a decree against a debtor of a deceased person for payment of his debt to a person claiming on succession to be entitled to the effects of the deceased person or to any part thereof, or

(b) proceed, upon an application of a person claiming to be so entitled, to execute against such a debtor a decree or order for the payment of his debt, except on the production, by the person so claiming of -

(i) a probate or letters of administration evidencing the grant to him of administration to the estate of the deceased, or

(ii) a certificate granted under section 31 or section 32 of the Administrator General's Act 1913, and having the debt mentioned therein, or

(iii) a succession certificate granted under part X and having the debt specified therein, or

(iv) a certificate granted under the Succession Certificate Act 1889, or

(v) a certificate granted under Bombay Regulation No. VIII of 1827, and, if granted after the first day of May, 1889 having the debt specified therein.

(2) The word 'debt' in Sub-section (1) includes any debt except rent, revenue or profits payable in respect of land used for agricultural purposes.'

8. On a reading of the Section, it is clear that the following conditions are to be satisfied before the provisions thereof are attracted. (1) The claim must be for the recovery of a debt and the relationship of debtor and creditor must exist between the defendant and deceased, (ii) the debt must be owing at the death of the deceased, (iii) the claim must be based on succession (iv) The claimant must be claiming to be entitled to the effects of the deceased (v) The claim must be against the debtor of the deceased.

9. The word 'debt' as indicated in sub-sec. (1) of Section 214 includes any debt, except rent, revenue or profits payable in respect of land used for agricultural purposes. Therefore all types of debts except those excluded under the provision come within the ambit of the section. The lower appellate court has found that all

the five conditions enumerated above are satisfied in the present case. The plaintiffs as daughters of the deceased have claimed the amount on the basis of succession to the effect of their deceased father. The existence of relationship of creditor and debtor between Mani Sethi and defendant has been found by both the courts below. The amount admittedly was outstanding at the death of Mani Sethi and the suit was filed against the debtor. As noticed earlier, the only ground on which the courts below held that the section did not apply to the case, was that the loan was not a simple loan but was coupled with the mortgaged property. Such distinction in my view, is not available to be made. As the language of Section 214 suggests, the matter would have been different if the suit was not filed for realisation of the loan amount, but was directed against the mortgaged property. But such is not the case here. The relief sought in the suit is for realisation of the loan amount only. Indeed, it is the specific case of the plaintiffs that they have been dispossessed from the land long prior to the suit and had not been able to realise the loan from the usufructs of the land. In these circumstances, the courts below clearly erred in holding that provision of Section 214 was not attracted in the case.

10. Some of the decisions cited at the Bar may be noticed at this stage.

11. The Andhra Pradesh High Court in the case of K. Laxminarayan v. V. Gopalaswami, AIR 1963 Andh Pra 438 considering the scope of Section 214 held that the mandatory nature of Section 214 makes it necessary for the party to obtain a succession certificate, and certainly it cannot be waived with impunity by him. Section 214 applies even if the suit was started by a creditor who died pending the suit, and his legal representatives were brought on record under Order 22, C.P.C.

12. The court further held that the section would apply only if it is a case of succession and not devolution of interest by survivorship. In the absence of any proof that the legal representative is entitled to the debt by right of survivorship, Section 214 would have its application.

13. In the same volume in the case of A. Ramaswami v. K. Venkanna, reported at page 135, the court held that the debt contemplated by Section 214 would not include a decree for the enforcement of the mortgagee's right as against the

mortgaged property, as it is not a decree for debt. It may be different with reference to a personal decree for debt. The mere fact that the personal remedy is still available to the mortgagee would not make any difference.

14. This court in the case of *Abhina Sahu v. Daitari Sahu*, reported in AIR 1957 Orissa 100, considering a case where a pronote was executed in favour of the karta of a joint Hindu family and on his death the money was due to the members of the family and his legal representatives, held that the money was due to his widow not by succession but by survivorship and it was therefore not , necessary that she should obtain a succession certificate before she could proceed to realise the amount by a suit. A similar view was taken by a Division Bench of Patna High Court in case of *Kaviraj Basudevanand v. Raghubir Saran*, AIR 1955 Pat 284.

15. The Allahabad High Court in the case of *Hafiz Mohd. Ibrahim v. Bhagwan Das*, AIR 1935 All 897, considered a case where a personal remedy under the mortgage deed had become barred by time long before the suit was brought and the mortgagee was simply entitled to a decree for sale of the mortgaged property. The Court held that an application by the legal representative of decree-holder for the execution of the mortgage decree for realisation of the amount by sale of the mortgaged property was not an application to obtain an order for the payment of his debt and as such no succession certificate was necessary.

16. The Bombay High Court in the case of *Abdul Majid v. Shamsheer Ali Fakruddin*, AIR 1940 Bom 285, construing Section 214,, observed that the necessity for obtaining a succession certificate cannot be waived by the parties. The obligation was not merely one in favour of the debtor it benefits also those interested in the deceased's estate by requiring that moneys forming part of the estate shall only be paid to a person who has been considered suitable for the grant of a succession certificate. It was further observed that omission to obtain a succession certificate is good ground of appeal, but if the decree is not appealed from, it remains a valid decree and cannot be regarded as a nullity.

17. The decision of the Calcutta High Court in the case of *Smt. Kiron Bala Dassi v. Atul Kristo Basu*, (1941) 45 Cal WN 628 on which reliance has been placed by the lower appellate court needs to be dealt with in some details. Firstly, the said

decision has not specifically dealt with the point arising for consideration in this case. All that is observed therein regarding applicability of Section 214 is that the Section only suspends the power of a representative to enforce payment of a debt by legal proceedings until he has obtained evidence of his representative title. The Court further observed that it is clear under the provisions of the Act that the heirs of Hindus do not in cases of intestacy have to take out letters of administration, although to enforce some of their rights under that title either letters of administration or a succession certificate must be obtained. Further, in that case the decree that was passed, was a mortgage decree and not a decree for realisation of loan. The plaintiff, widow of the mortgagee claimed that the acceleration clause in the mortgage deed had become operative and that she was entitled to institute proceedings to bring the property to sale. The decision is clearly distinguishable from the present case, inasmuch as in the present suit, the plaintiffs seek to realise the loan and do not seek any relief in respect of the mortgage property. From the plaintiffs' case as noticed earlier, it is clear that the suit was filed against the debtor for realisation of the money. The plaintiffs claimed to realise the same as heirs and successors of the creditor. Thus all the conditions necessary for application of Section 214 are satisfied in the case. The exception sought to be made out by the courts below, as discussed earlier, is clearly erroneous. The position is therefore inescapable that the plaintiffs could not proceed with the suit to realise the loan amount without obtaining a succession certificate. The point having been raised before the courts below, the plaintiffs had sufficient time to rectify the defect, but they did not choose to do so. Even in this court despite notice they have not entered appearance.

18. On the aforesaid discussion, the appeal succeeds and the same is allowed. The judgment and decree of the lower appellate court confirming that of trial court are set aside. The suit is dismissed. There will be no order for costs of this appeal.