

Krishnan Vs. Dorarajan Chettiar

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Court : Kerala

Decided On : Sep-12-1980

Reported in : AIR1980Ker234

Judge : P. Janaki Amma, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 145 and 151

Appeal No. : C.R.P. No. 2308 of 1979-B

Appellant : Krishnan

Respondent : Dorarajan Chettiar

Advocate for Def. : M.A.T. Pai and; M.C. Gopi, Adv.

Advocate for Pet/Ap. : P.N.K. Achan,; K. Vijayan and; N.N. Sugunapalan, Adv

Disposition : Petition dismissed

Judgement :

ORDER

P. Janaki Amma, J.

1. The revision petitioners are the respondents in E. A. No. 223 of 1979 in O. S. No. 299 of 1972, of the Munsiff's Court, Chittur. In execution of the decree in the above suit, as per E. P. No. 98 of 1979, an item of paddy field along with the crops

standing thereon, was attached by RW-1, Amin, as per orders of the Court. After attachment the Amin entrusted the crops to the present petitioners and one Manikkan on their executing a bond dated 16-3-1979. Under the terms of the bond the executants undertook to look after the crops and to deliver over the property without any damage to the crops as and when required by the Court. In default of doing so, they undertook to deposit an amount of Rs. 3,450/- or such amounts as the Court would direct them to deposit towards the value of the crops. E. A. No. 223 of 1979 was filed by the decree-holder on 24-3-1979 alleging that the present petitioners and the judgment-debtor together harvested the crops and removed the same. The decree-holder, therefore, requested the Court to issue directions to the kychitdars to deposit the value of the crops as per the kychit, and if default is made, to recover the amount by arrest and detention of the petitioners. The petitioners filed objections to the above motion. They denied that the crops were entrusted to them by the Amin. The property is close to their own residence and the Amin made them sign in the document only as persons present at the time of attachment. The petitioners were illiterate coolies and as such they did not know the contents. They denied their liability to pay any amount under the bond. In support of the contention they examined themselves as RW-2 and RW-3 and also the Amin as RW-1. The Amin, as RW-1, deposed to the fact of attachment and the entrustment of the crops on kychit to the petitioners. The petitioners as RWs 2 and 3 denied that they knew the contents of the document. They, however, admitted their signature. According to RW-2, he knew only to write his signature and did not know to read and write. RW-3 stated in his evidence that he is illiterate and that he put only his thumb impression.

2. The learned Munsiff, however, held, that the petitioners put their signature knowing the contents of the document. Reference is made to E. A. No. 191 of 1979. That was a petition filed by the petitioners prior to the present proceedings, wherein they contended that the crops in the property entrusted to them on kychit had been taken away by some strangers without their knowledge. The admission in that petition regarding execution of the kychit, according to the executing court, belies the contention now put forward, that the petitioners were not aware of the contents of the document. The Court, therefore, overruled the objection, and, held that the petitioners, as also the first kychitdar, were liable to deposit the amount

mentioned in the bond. It is this order that is challenged by the petitioners in this revision petition.

3. The contention, that the petitioners were not aware that the document they signed is a bond containing an undertaking to pay the amount mentioned therein, cannot be sustained. It is no doubt true, that the evidence in the case may show that the second executant, who is the second petitioner here, is illiterate. But, the Amin, as RW-1, has categorically stated in his evidence that he read over the kychit and explained the contents thereof to the executants before they signed the document. It is noted that the first executant has not raised any objection against his liability under the bond. It is significant that in spite of the fact that the Amin deposed that the document was read over to the executants no case to the contra has been spoken to by RW-2 or RW-3. The circumstance that immediately after the execution of the document the petitioners filed I. A. No. 191 of 1979 complaining about the theft of the crops also indicates that they were aware that they were the persons who were in charge of the crops. Therefore, the case that the petitioners did not know the contents of the document, which they signed, has to be discarded.

4. On behalf of the petitioners it is further contended that the bond executed by them is not enforceable as it does not fall within the purview of Section 145 of the Code of Civil Procedure. A number of rulings have been cited by the learned counsel for the petitioners in support of the contention. It is argued that under Section 145 of the Code of Civil Procedure a bond to be enforceable must have been executed as per order of Court. In the present case, it is pointed out that there was no order of the Court calling upon the respondents to execute the bond.

5. Section 145 of the Code of Civil Procedure contemplates furnishing of a security or guarantee: (a) for the performance of any decree or any part thereof; (b) for the restitution of any property taken in execution of a decree; and, (c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceedings consequent thereon. It is true that the bond in the present case was not executed for the performance of any decree; neither was it for the restitution of any property. It contains an

undertaking to look after the crops and produce the same at the place and time as; ordered by the Court and in default to, deposit Rs. 3,450/- or such amount as would be ordered by the Court. At the; same time the bond does not show that the entrustment of the crops and the execution of the bond were as per specific orders of the Court, which is one of the conditions required for the bond to fall under Clause (c) of Section 145 of the, Code of Civil Procedure.

6. Reliance was placed by the learned counsel for the respondents on the decision in Jagat Narain v. Nizamuddin, AIR 1933 All 385. In that case a commissioner appointed to attach goods locked the goods in the shop and appointed two watchmen. In a proceeding against the watchmen it was held that they were not the custodians of the articles attached; nor did they become liable as sureties within the meaning of Section 145 of the Code of Civil Procedure. This decision has no application in the present case. Another decision referred to by the learned counsel for the respondents is Nanhoo v. Mt. Gendiya, AIR 1935 All 768. In that case the Amin, who attached certain crops belonging to the judgment-debtor, entrusted them to a supurddar, who disobeyed an order of the Court. The court ordered him to pay a sum of Rs. 229-10-0 with costs. It was held, that the supurddar was not a surety within the meaning of Section 145 of the Code of Civil Procedure, and, therefore, the bond executed by him could not be enforced in execution proceedings. The terms of the bond, if any, are not available. Another case relied upon is Chellam v. Ramalingam, AIR 1956 Mad 201. The question involved in that case was whether a petition for execution against the executants of the surety bond would save limitation against the judgment-debtor. The point involved in the present case did not arise for consideration. The learned counsel for the petitioners also placed reliance on the decision of the Supreme Court in Chouthi Prasad v. Union of India, AIR 1967 SC 1080. The decision deals with the scope of a prohibition order under Order XXI, Rule 46 and no question of enforcement of a bond arose for consideration. Reliance was then placed on Korathu v. Gopalan Nair, AIR 1952 Trav Co 237. In pursuance of a decree for redemption the decree-holder in that case deposited the mortgage amount and applied for delivery of the property. There were appeal and second appeal by the mortgagee and as a condition precedent for stay of delivery security bonds were executed by the mortgagee for mesne profits. On the appeal and the second

appeal being dismissed the bonds were sought to be enforced, when objection was raised that the bonds did not conform to the requirements of Section 145 of the Code of Civil Procedure and that they were not enforceable in execution. A Division Bench of the Travancore-Cochin High Court held, that it was doubtful that the case came under Section 145 of the Code of Civil Procedure. The Court, after a review of the case law on the point, which included decisions of the Privy Council, held, that the bond was enforceable under the inherent powers of the Court. (See *Sadasiva Pillai v. Ramalingam Pillai*, (1875) 2 Ind App 219, *Raj Raghubar Singh v. Jai Indra Bahadur*, ILR 42 All 158: (AIR 1919 PC 55), *Rohani Ramadhwaj v. Har Prasad*, AIR 1943 PC 189, *Muthuswami Pillai v. Manikka Mooppan*, AIR 1936 Mad 990, *Narayan Pandalai v. Vishnu Nambudri*, 20 Trav LJ 505 and *Chevunni v. Laxmidas Pramji*, 23 Cochin 408). The decision, no doubt, supports the case of the petitioners, that Section 145 of the Code of Civil Procedure has no application. But, at the same time, it does not in any way, support their case that the bond is not enforceable. What is laid down is that even though the security bond may not fall strictly within the four corners of Section 145, the Court has general jurisdiction over the subject matter involved and therefore the bond can be enforced in exercise of the inherent powers of the court. The principle would apply in the instant case. The petitioners, no doubt, did not make themselves liable for the decree; nor is it made out that the bond was executed under orders of the Court. But under the terms of the bond they undertook to deposit Rs. 3,450/- in default of delivery of the crops attached. There is also a clause that the bond is enforceable without recourse to an original suit. It is therefore not open to the petitioners to resile and contend either that they are not liable under the bond or that the bond is not enforceable in summary proceedings in the course of execution of the decree.

7. The revision petition fails and is dismissed. The petitioners are given a month's time to deposit the amount. The parties will suffer their costs.