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Court : Chennai

Decided On : Oct-29-1935

Reported in : (1936)70MLJ601

Appellant : Varadachari

Respondent : The Secretary of State for India in Council Represented by the Collector of Madura

Judgement :

Varadachariar, J.

1. This Revision petition raises a question of some importance but as there is practically no authority in favour of the petitioner's contention I do not feel called upon to refer it to a Division Bench, especially in view of the fact that the principle of the decision in Gayanoda Bala Dassee v. Butto Kristo Bairagee I.L.R. (1906) 33 Cal. 1040 and of the decision by Cornish, J., in Deputy Commissioner of Police v. Vedantam : AIR1936 Mad132 has been accepted by a Division Bench in C.M.P. No. 2083 of 1935.

2. In O.S. No. 71 of 1928 on the file of the Madura sub-Court, defendants 11 to 15 were directed to pay to the Government a portion of the court-fee which would have been payable by the pauper plaintiff. In another suit, O.S. No. 97 of 1930, the

present petitioner obtained a money decree against the same defendants and brought certain properties to sale. This Revision Petition arises out of an application made on behalf of the Government that out of the proceeds realised by the sale of the properties of defendants 11 to 15 the amount directed by the decree in O.S. No. 71 of 1928 to be paid to the ' Government should be paid in preference to the claim of the decree-holder in O.S. No. 97 of 1930. The claim was made by the Government on the basis that as a Crown debt it was payable in priority to all other liabilities of defendants 11 to 15. The lower Court upheld this contention on behalf of the Government. Hence this Revision Petition by the decree-holder in O.S. No. 97 of 1930.

3. It has been argued on behalf of the petitioner that as a first charge is declared by Rule 10 of Order 33, Civil Procedure Code, only on the subject-matter of the pauper suit it could not have been the intention of the Code to recognise the doctrine of priority of Crown debts to any greater extent in connection with orders for costs passed under Order 33. It was contended that Government could well have realised all the court-fee payable to them in respect of O.S. No. 71 of 1928 from out of the properties decreed to the plaintiff in that suit. Relying upon certain observations in *Attorney-General v. Dr. Keyser's Royal Hotel* (1920) A.C. 508 it was suggested that even assuming that the Government could have invoked the doctrine of priority of Crown debts it must, in view of the scheme of the Code, be deemed to have waived or restricted its operation.

4. I am not able to accede to the petitioner's contention. Assuming that the Government could have realised the court-fee payable by the pauper plaintiff from out of the properties decreed to the plaintiff in this suit, it does not take away the right of the Government to recover from the defendants in the suit such portion of the court-fee as the Court may in the exercise of its power under Rule 10 direct to be recovered from particular defendants. Rule 13 of the same order provides that questions arising between the Government and the parties so directed to pay shall be deemed to be questions arising between the parties to the suit under Section

47. The result is that the direction in the decree against any particular defendant makes him to that extent a judgment-debtor and the Government a decree-holder.

It was laid down so long ago as in *The Secretary of State for India v. The Bombay Landing and Shipping Company, Ltd.* (1866) 5 B.H.C.R. 23 that in respect of decree debts the Secretary of State is entitled to invoke the doctrine of priority of Crown debts. There is nothing in the later legislation to preclude the application of that doctrine. On the other hand, the cases I have already referred to proceed on the footing of its applicability. The third clause of Section 73 of the Code is significant in this connection. It provides that nothing in the section shall affect any right of the Government. In the context it cannot possibly refer to cases where the Government have a first charge; because, there is no possibility of such first charge being affected by anything contained in Clauses

(1) and

(2) of that section. Such a charge will prima facie be paid off under the proviso to Clause

(1) if the property is sold free of the charge. The third clause can, therefore, reasonably refer only to cases in which the Government is in the same position as any other decree-holder and its intention obviously is to say that in such circumstances the Secretary of State will not really be governed by the provisions of Clauses

(1) and

(2) but will be entitled to the benefit of the doctrine of priority. I, therefore, see no reason to interfere with the order of the lower Court.

5. The Revision Petition is dismissed with costs.

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