

Shivamma and Another Vs. Arogyamma and Another

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Court : Karnataka

Decided On : Jun-17-2011

Reported in : 2011(3)KCCR2458

Judge : B.S. Patil

Appeal No. : Writ Petition Nos. 7489-90 of 2011 (GM-CPC)

Appellant : Shivamma and Another

Respondent : Arogyamma and Another

Advocate for Pet/Ap. : For the Petitioners: Basavaraj R. Bannur for M/s. Bannur Associates, Advocates. For the Respondents: R1 - A. Lourdu Mariyappa, Advocate.

Judgement :

B.S. PATIL, J:

1. In these writ petitions, the judgment debtors 1 and 3 in Execution Petition No.78/2004 (re-numbered as 24/2007) are seeking to quash the execution proceedings pending on the file of Sr. Civil Judge, K.R. Nagar.

2. Petitioners 1 and 2 are the wife and son respectively Sri. K.N.Nagaraju. Suit O.S.No.38/2000 was filed by Smt. Arogyamma against petitioners 1 and 2 and the 2nd respondent-Mallikarjuna for recovery of a sum of `52,500/- along with interest

alleging that the said sum was advanced by the plaintiff to the deceased Sri. K.N. Nagaraju and that the petitioners and the 2nd respondent being the legal representatives of deceased Sri. K.N. Nagaraju having succeeded to his properties were liable to discharge the legal debt.

3. The suit came to be decreed on 09.02.2004 holding that the plaintiff was entitled to recover the said sum of `52,500/- from the defendants along with interest at 6% p.a. During the course of judgment it is held that after the death of Sri. K.N. Nagaraju, his movable and immovable properties had come to the possession of the defendants and it is their legal obligation to pay the amount. This judgment, so far as the defendants are concerned has attained finality. The decree holder Smt. Arogyamma initiated execution proceedings in E.P.No.78/2004 which is later on re-numbered as 24/2007. It is this proceeding that is sought to be quashed by the judgment debtors-petitioners herein.

4. Learned Counsel for the petitioners reiterating the petition averments and the grounds urged therein submits that as per Sections 50 and 52 of the Code of Civil Procedure the decree can be executed against the legal heirs to the extent of property which has come to the hands of the judgment debtors but in the present case, as no such property has come to the judgment debtors from deceased Sri. K.N. Nagaraju, the decree holder was not entitled to proceed against the properties movable or immovable belonging to the petitioners-judgment debtors. It is also contended that though objections were filed in this regard by the judgment debtors taking all specific contentions, the executing Court without considering the said objections was proceeding with the execution proceedings.

5. Learned Counsel for the respondent strongly refutes the above mentioned contentions and urges that there is a clear finding recorded in the suit holding that properties left behind by Sri. K.N. Nagaraju both movable and immovable have come to the possession of the petitioners and therefore the executing Court cannot re-examine this aspect. He also submits that it is for this reason Section 52 has no application to the facts of the present case.

6. Having heard the learned Counsel for the parties and on careful consideration of the entire materials on record, it is seen that sub-clause 1 of Section 52 of CPC

makes it clear that where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property. Sub-clause 2 of Section 52 states that where no such property remains in the possession of the judgment debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession the decree may be executed against the Judgment debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

7. In the instant case, it is clear from the findings recorded by the trial Court in the suit that the defendants/judgment debtors are found to have come in possession of the properties movable and immovable of Sri. K.N. Nagaraju who was a borrower. The judgment debtors are none other than his wife and children. When such a clear finding is recorded in the suit after contest and after appreciation of evidence in this regard, it will not be open for the executing Court to sit in judgment over such a finding and to record a contrary finding on the objections filed by the judgment debtors contending that they have not come in possession of any property movable or immovable belonging to Sri. K.N. Nagaraju. Therefore, on this ground the petitioners are not justified in approaching this Court seeking to quash the execution proceedings. It has to be observed here that the decree is passed as back as on 09.02.2004 and the same has attained finality inasmuch as no appeal was preferred against this by the petitioners-Judgment debtors. This is because the execution proceedings which are initiated as back as in the year 2004 are being protracted for one reason or the other.

In the light of the above, I do not find any good ground to interfere in the execution proceedings initiated by the decree holder. Hence, the writ petitions are dismissed.

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