
Sri Laxmi Ganapathy Rice Mills Vs C. Radhakrishnan and M.C. Satyavathi**O.P. No. 356 of 1985**

Court: Madras High Court**Date of Decision:** Aug. 8, 1989**Acts Referred:**

Civil Procedure Code, 1908 (CPC) " Order 21 Rule 50, Order 21 Rule 50(2)#Partnership Act, 1932 " Section 25

Hon'ble Judges: Abdul Hadi, J**Bench:** Single Bench**Advocate:** M. Meerasahib, for the Appellant; E. Srinivasulu, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Abdul Hadi, J.

The main O.P. is for Letters of Administration with the Will dated 5-3-1966 annexed, which was executed by the

deceased Yasodammal, who died on 28-9-1966. It was filed on 29-5-1985. The Letters of Administration was granted in favour of the petitioner

C. Radhakrishnan by order dated 19th December, 1985. According to the petitioner, he has been given life interest in the property requested and

the absolute interest therein goes to his children. Subsequently in January, 1987, the said Radhakrishnan and another, who were partners in the firm

C. Radhakrishna and Co., filed I.P.No.2 of 1987 for adjudicating them as insolvents and by order dated 29-1-1987, they were adjudicated so.

While so, the applicant herein, a creditor of the said C. Radhakrishnan and Co. filed this Application No.2524 of 1987 for revoking the above said

Letters of Administration and Application No. 134 of 1987 to set aside the above said order of adjudication.

2. The abovesaid creditor had actually obtained a decree dated 16-7-1985 for a sum of Rs. 36260.24 with interest in O.S.No.123 of 1985 on the

file of City Civil Court, Madras. Even while the suit was pending, the order for conditional attachment before judgment was made on 21-3-1985

and subsequently after the decree E.P. No. 1295 of 1986 for bringing the above said property to sale, was filed. While so, one C. Banuprakash,

the minor son of C. Radhakrishnan, represented by his father, filed a claim petition, stating that the property attached belonged to him absolutely

and that his father had only life interest therein as per the terms of the above said Will. It is also alleged that the suit property had already been sold

to the 2nd respondent herein and the sale proceeds were invested with Tamil Nadu Transport Development Corporation Ltd, for a period of 3

years. In the circumstances, in this Application No. 2524 of 1987, the genuineness of the Will is challenged. If the Will were not genuine, the said

C. Radhakrishnan will get absolute interest in the suit property as he is the son and sole heir of the deceased Yasodammal. On the other hand, if

the Will is genuine, under the Will he will get only life interest in the said property.

3. Both A, No 2524 of 1987 and A.No.134 of 1987 were originally dismissed by order dated 11-4-1988. However, by order dated 28-6-1989

in O.S. Appeal Nos.65 and 66 of 1989, the said dismissal order was set aside and the respective applications were remanded for fresh disposal.

Particularly, in the order in O.S. Appeal No.65 of 1989 (against the order dated 11-4-1988 in this Application No. 2524 of 1987), the remand

was made for fresh disposal on the ground that there was no speaking order for holding that the applicant herein had no interest in the property in

question. So, both these applications were finally posted before me on 31-7-1989. However, on that day, Application No.134 of 1987 was

withdrawn and hence dismissed and arguments were heard in this Application No. 2524 of 1987.

4. The contention of the learned Counsel for the applicant is that in view of this application for revocation the Original Petition should be registered

and numbered as T. O.S. But the contention of the learned Counsel for the respondent is that the applicant is not ""a person interested in the

property of the deceased"" and so O.25, R.62 of the Original Side Rules will not apply. The learned Counsel for the applicant cited two decisions

on this aspect, viz., Dinabandhu Roy Brajaraj Saha, Firm Vs. Sarala Sundari Dassya, and AIR 1944 11 (Privy Council) In Dinabandhu Roy

Brajaraj Saha, Firm Vs. Sarala Sundari Dassya, , it was held that a creditor had a right to intervene in the probate proceedings started after he

had, advanced money to the heirs-at-law of the deceased and he had, therefore, the right to apply for the revocation of the grant on the ground

that the Probate was obtained in fraud of the creditors of the heirs-at-law of the deceased-testator. Further in AIR 1944 11 (Privy Council) it was

held that if a person was complaining that he had in fact been defrauded, he could apply to revoke the Probate and thereby cause the fraud to

become inoperative. In the present case also, the applicant alleges such a fraud in the execution of the above said Will. The applicant specifically

alleges that the said Will is a false and fabricated one and must have been created and forged etc. Therefore, the applicant claims that he has an

interest in the property of the deceased.

5. The learned counsel for the respondent does not seriously dispute the proposition laid down in the abovesaid two decisions, but contends that

the applicant is not a creditor at all of the said C. Radhakrishnan, though he was the creditor of the firm C. Radhakrishnan and Co. This contention

cannot be accepted, because the said C. Radhakrishnan was admittedly a partner of the said firm C. Radhakrishnan and Co. and under S.25 of

the Partnership Act, every partner is liable, jointly with all the other partners and also severally for, all acts of firm done while he is a partner. Thus,

under the partnership law, each partner shall be liable as if the debt in question has been incurred on his personal liability. Vide N. Ranganayakulu

Vs. J. Narasimharao and Company and Others, wherein the Andhra Pradesh High Court held that in the case of a decree against the firm, the

decree can be executed (even without resorting to O.21, R.50, C.P.C.), by arrest and detention in civil prison of any partner of the "judgment-

debtor-firm". Thus, the Andhra Pradesh High Court ruled out the objection that such a decree was not executable by arrest of the partner of the

judgment-debtor firm. The said High Court, after referring to Topanmal Chhotamal Vs. Kundomal Gangaram and Others, , also observed that the

necessary implication of the decision of the said Supreme Court was that the individual partners were liable for the firm's debts. Therefore, it

cannot be held that the applicant herein is not a creditor of the said C. Radhakrishnan, who is the 1st respondent herein. (The 2nd respondent is

the purchaser under the above said sale by the 1st respondent). No doubt, the learned Counsel for the 1st respondent contended that the above

said decree against the firm is not an executable decree under O.21, R.50, C.P.C., the leave contemplated under O.21, R.50(2), C.P.C., having

not been obtained for executing the decree against the partner C. Radhakrishnan. He also cited Ravindra Finance, by its Partner, S. Dharwar v.

Yaanai Tobacco Co. 91 L.W. 409. But O.21 R.50 C.P.C. provides for only a mode of execution and simply because that mode has not been

complied with, it cannot be said that the liability itself does not exist as against a partner of the firm, when the decree is only against the firm So

Ravindra Finance, by its Partner, S. Dharwar v. Yaanai Tobacco Co. 91 L.W. 409 has no application in considering the present application for

revocation. As has been held in the above said Andhra Pradesh decision, there is even another mode of execution, viz., arrest and detention of the

partner of the said firm. Further, in the above said I.P. No.2 of 1987 itself, filed by C. Radhakrishnan and another, the present applicant is shown

as creditor.

6. In the circumstances, I hold that this application is maintainable by the applicant. I may also point out that the main O.P. was filed 19 years after

the death of the testatrix and that too, as stated above, only after the above said attachment order was made on 21-3-1985. This O.P. was filed

on 29-5-1985. It is also to be seen whether Art.137 of the Limitation Act would apply to the above O.P., particularly in view of The Kerala State

Electricity Board, Trivandrum Vs. T.P. Kunhaliumma, In the circumstances, I direct this Original Petition to be registered and numbered as

Testamentary Original Suit.