
(1977) 2 KarLJ 396

Karnataka High Court

Case No: CRP. 1216 of 1976

Sha Chandanamall
Hirachand and Co.

APPELLANT

Vs

J.F. Castelino

RESPONDENT

Date of Decision: June 8, 1977

Acts Referred:

- Partnership Act, 1932 - Section 69

Citation: (1977) 2 KarLJ 396

Hon'ble Judges: Govinda BhatC, J

Judgement

@JUDGMENTTAG-ORDER

This Revision Petition is directed against the order dated 6-3-1976 made by the Civil Judge, Mangalore, in Misc. Case No. 26 of 1974 rejecting the petitioner's claim petition under Order XXI, Rule 58 of the Code of Civil Procedure.

The matter arises in this way. The first respondent obtained a money decree against respondents 2 to 4 in O.S. No. 105 of 1972 on the file of the Court of the Civil Judge, Mangalore. In execution of the decree in Execution Case No. 110 of 1973, the decree-holder attached the pool dividends in the hands of the Coffee Board payable to the judgment-debtors, for the coffee seasons 1973-74 and 1974-75. The petitioner, to whom the coffee crop had been hypothecated under a tripartite agreement entered into between the judgment-debtors who are the coffee growers and the Coffee Board which is to distribute the pool dividends, and the petitioner who is the creditor, applied under Order XXI, Rule 58 of the Code of Civil Procedure, for raising the attachment. That application was numbered as Misc. Case No. 26 of 1974. The decree-holder opposed that application on the grounds inter alia that the petitioner has not proved that the firm is a registered firm and the application is barred by S. 69 of the Partnership Act, 1932. The learned Civil Judge held on merits on the basis of the documentary evidence produced in the case, that it has been established that the coffee crop for the seasons 1973-74 and 5

974-75 has been hypothecated to the petitioner and that the petitioner is entitled to receive the pool dividends from the Coffee Board in respect of the coffee delivered by the judgment-debtors. But he dismissed the application on the sole ground that S. 69 of the Partnership Act is a bar to the application as the petitioner has failed to show that it is a registered firm. Aggrieved by this order, the petitioner has preferred the above revision petition.

Respondent-I is unrepresented before me. It was urged by Shri B.V. Acharya, learned Counsel for the petitioner, that S. 69 of the Partnership Act does not constitute a bar as the proceedings taken by his client is not one to enforce a right arising from any contract. Shri Acharya submitted that the petitioner's case is that the pool dividends in the hands of the Coffee Board are payable to his client under the crop hypothecation agreement entered into between the judgment-debtors, the Coffee Board and the petitioner, prior to the date of the attachment, and that the claim petition is not one for the enforcement of a right arising from the contract.

In order to attract S. 69 of the Partnership Act, it has to be shown that the claim proceedings are proceedings to enforce a right arising from a contract. Sub-sec. (3) of Sec. 69 read with sub-section (2) provides that proceedings to enforce a right arising from a contract cannot be instituted unless the firm is registered. The petitioner is not enforcing any right arising from a contract in filing a claim petition in respect of its property on the ground that it does not belong to the judgment-debtors. The submission made by Sri Acharya is well founded and it is supported by the decision of the Madras High Court in Kothapalli K. Subbayya v. N. Subbarayadu¹ wherein Cornish, J has taken the view that an application for raising the attachment made under Or. XXI. Rule 58 of the Code of Civil Procedure, cannot be construed as a proceeding to enforce a right arising from a contract. The learned Civil Judge has dismissed the claim petition made by the petitioner solely on the erroneous view that the application under Order XXI. Rule 58 for raising the attachment comes within the scope of S. 69 of the Partnership Act. As stated earlier, he has held on merits that the claim petition ought to succeed. In my opinion, the learned Civil Judge has failed to exercise his jurisdiction on the erroneous view of the law taken by him.

Accordingly, I allow this revision petition, reverse the order of the Court below and allow Misc. Case No.26 of 1974. The attachment effected in the execution case shall be raised. The respondents being unrepresented, there will be no order as to costs.