(1997) 01 KL CK 0035

High Court Of Kerala

Case No: C.R.P. No. 222 of 1997

M.K. Lakshman		APPELLANT
	Vs	
K. Surendran		RESPONDENT

Date of Decision: Jan. 31, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 1, Order 21 Rule 1(2), Order 21 Rule 1(3), Order 21 Rule 2, Order 21 Rule 2(2)

Hon'ble Judges: T.R. Ramachandran Nair, J

Bench: Single Bench

Advocate: S.V. Balakrishna Iyer, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Ramachandran, J.
This revision is filed against the Order of the Sub Judge of Mavelikkara in E.A. No. 943 of 1996 in E.P. No. 159 of 1996 in O.S. No. 132 of 1982.

2. The revision Petitioner was the judgment-debtor in O.S. No. 132 of 1982 before the Sub Court of Mavelikara. In pursuance to the decree obtained for realisation of the amount due from the revision Petitioner, E.P. No. 159 of 1996 was filed against him. The contention of the revision Petitioner was that the power of attorney produced before the executing Court was not executed by the decree holder and that it was a forged one. Another contention taken was that as per the account maintained by the revision Petitioner the amount was discharged to the decree holder and that there was no amount due as per the decree. To prove his contentions the revision Petitioner wanted evidence to be let in before the executing Court. Thus he filed E.A. No. 943 of 1996 to summon the decree holder as a witness to prove his case. That was rejected by the executing Court. Hence this revision.

3. The learned Counsel appearing for the revision Petitioner submitted that if the revision Petitioner was given an opportunity to let in oral evidence and if he was allowed to cross-examine the decree holder it would turn out that the power of attorney produced was forged one as the signature therein was different from the admitted signature in the plaint and the vakalath. It was also submitted that if the revision Petitioner was permitted to produce his accounts showing the discharge of the decree debt, there was no necessity to execute the decree. Thus the prayer of the learned Counsel appearing for the revision Petitioner was that the revision Petitioner should be given an opportunity to let in oral evidence. Thus the point arising for consideration is as to whether any oral evidence can be let in by the executing Court.

4. Under Order 21 Rule 2A of the CPC no payment or adjustment shall be recorded at the instance of the judgment debtor unless (a) the payment is made in the manner provided in Rule 1; or (b) the payment or adjustment is proved by documentary evidence; or (c) the payment or adjustment is admitted by, or on behalf of the decree holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the Court. There is Sub-rule (3) where it is stated that a payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree. Admittedly the alleged payment by the revision Petitioner was not certified. The learned Counsel in this context referred to Rule 2 of Order 21 of the Code of Civil Procedure. That deals with the certifying of the payment or adjustment by the decree holder. Under Sub-rule (2) of Rule 2 of Order 21 the judgment debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly. In the present case the revision Petitioner has no case that he has taken any steps under Sub-rule (2) of Rule 2 of Order 21 of the Code of Civil Procedure. On the other hand, his only case is that if he is given an opportunity to let in oral evidence in the E.P. he would be able to satisfy the Court that the amount was already discharged. Such an opportunity should not be given in view of the provisions under Sub-rule (3) of Rule 2 of Order 21 of the Code of Civil Procedure. Thus I do not find any merit in this revision. Regarding the power of attorney produced in execution, it is the duty of the Court to verify as to whether the power of attorney is proper or not. Thus the question as to whether the power of attorney is proper cannot be challenged by the judgment-debtor in execution. For that reason also this revision has no merit.

For the above reasons confirming the order of the lower Court this revision is dismissed without costs.