
(2000) 01 AP CK 0005

Andhra Pradesh High Court

Case No: CRP No. 3614 of 1999

Janab Shaik Shafik
Ahammad

APPELLANT

Vs

Janab Sahik Masthan
Valli

RESPONDENT

Date of Decision: Jan. 28, 2000

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 38 Rule 5

Citation: (2000) 3 ALD 486 : (2000) 3 ALT 111

Hon'ble Judges: R.M. Bapat, J

Bench: Single Bench

Advocate: Mr. S.V. Bhat, for the Appellant; Mr. M. Venkata Ramana Reddy, Caveator, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner herein was the plaintiff, who had instituted OS No.233 of 1999 in the Court of the Principal Junior Civil Judge, Madanapalle against the defendant-respondent herein for recovery of certain amount due under the pronote. During the pendency of the suit, the plaintiff-petitioner herein filed IA No.551 of 1999 seeking an order of attachment before judgment under Order 38, Rule 5 CPC. The said application was rejected. Hence the revision.

2. Heard both sides.

3. It appears from the impugned order that the learned Judge felt that since the property, which the plaintiff wants to get attached, is already mortgaged to third party, the application for attachment before judgment under Order 38, Rule 5 CPC is not maintainable and hence the application was rejected.

4. The legal position explained by the learned Judge is not correct. If this property is attached before judgment and if the decree is passed in the suit, then the plaintiff-petitioner herein will have second claim and he can recover the money due under the decree when the claim of the earlier mortgagee is satisfied. Hence, this Court allows IA No.551 of 1999 in OS No.233 of 1999 which is pending on the file of the Principal Junior Civil Judge, Madanapalle.

5. With this direction, the civil revision petition is allowed. No costs.