
Balaraman Vs Varadammal

C.R.P. No. 2263 of 1985

Court: Madras High Court

Date of Decision: Feb. 18, 1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) – Order 21 Rule 30, Order 21 Rule 46

Citation: AIR 1987 Mad 94 : (1986) 99 LW 190

Hon'ble Judges: Shanmukham, J

Bench: Single Bench

Advocate: R. Venugopalan, for the Appellant; M.G. Natarajan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Shanmukham, J.

The petitioner is one of the sons of the judgment-debtor (1st respondent in E. P. 643 of 1984, X Asst. Judge, City Civil

Court, Madras) and 3rd respondent in that execution. The respondent-decree-holder obtained a decree for maintenance in O. S. 7927 of 1976

against her husband, Narayanan. The decree also provided a charge over the property No. 91 Venkatarangam Pillai St. Triplicane, Madras. The

said execution was laid against the legal representatives of her husband viz, his three sons and a daughter, as the judgment-debtor passed away in

the meanwhile. The amount claimed is Rs. 18,384-10 after giving credit to the payment of Rs. 20,300. In the execution a sum of Rs. 36,000

standing to the credit of the judgment-debtor and his son, the petitioner in Punjab National Bank, Triplicane, Madras was sought to be attached by

issue of a prohibitory order to the bank. All the petitioner's objections were rejected by the Court below and execution was ordered. Hence, this

revision.

2. The same grounds are urged even here. The fiat is that when there is a charge decree, the decree-holder is not entitled to proceed against other

assets of the judgment-debtor in the hands of his legal representatives without exhausting her remedy against the charged property. Such a

contention is hardly tenable in the teeth of the directions contained in the decree. The decree directed that the defendants do pay the plaintiff at the

rate of Rs. 400 per month from the date of suit towards maintenance and that the plaintiff be at liberty to charge the suit property for the due

payment of the maintenance amount. The rest of the decree is omitted as not germane for the present purpose. Unlike a mortgage decree which

specifically provides that the decree-holder should proceed against the hypotheca and should there be any shortfall, the decree-holder can proceed

against the judgment-debtor personally, this, decree enabled the decree-holder to execute it personally against the judgment-debtor in the first

instance and if it was not possible to realise the decree debt, the decree-holder is entitled to proceed against the charged property.

3. The second objection is that as the deposit is in the joint names of the petitioner and the judgement-debtor, it is not attachable. This contention is

not at all sound. O. 21, C.P.C., visualises attachment of the right, title and interest of the judgment-debtor in any property, both movable and

immovable. If such a contention were to be accepted, it will lead to disastrous results. For no interest other than full ownership will not be

attachable. But as already pointed out by me, that is not the law. Indeed, O. 21, R. 46 provides that in the case of movable property other than a

debt, a share, the attachment shall be made by a written order prohibiting the person in possession of the same from giving it to the judgment-

debtor. The passages in Tenant's Banking Law and Practice in India, 14th Edn. relied on by the petitioner points out that in the case of a deposit in

joint names, it is open to the Bank to apprise the game to the Court and to take appropriate directions to the exact amount to be deposited. The

learned author has not gone to the extent of expounding a proposition that Court cannot attach under O. 21, R. 46, C.P.C., a sum standing to the

joint names of judgment-debtor and another. The passage relied on is at page 151 and it is as follows:

A balance standing at the credit of a joint account though payable to either of them cannot be attached by a Garnishee order.

The learned author had pointed out that the payment to one, of the whole amount will discharge the bank from its obligation. The very author at

page 163 has stated as follows-

It is usual that the mandate should also deal with the question of survivorship. Although instructions are not absolutely necessary, it would be a

desirable precaution to ascertain before hand what is to happen in the event of the death of one of the joint holders. Speaking generally, on the

death of one of the joint account holders, the survivor is entitled to the whole amount both under the law of devolution applicable to joint owners

and by the custom of bankers.

When an account is opened in joint names, it is an agreement between the depositor and the bank. Such agreement will not in any way affect the

petition of law, particularly O. 21 , R. 46. Even the author had stated very cautiously that generally speaking, on the death of one of the joint

account holders, the survivor is entitled to the balance amount standing to the credit. I must also add that before any order of Court intervened, if

the bank had paid the entire balance to the survivor, then the Bank gets a valid acquittance. This is in my view the correct position of law.

4. The other ground of resistance is that the joint account was on "Either or survivor" terms, that at the time of execution, as the judgment-debtor

was dead, the petitioner as survivor became entitled to the whole amount, and that, therefore, the same is not liable to attachment. The deposit on

such term as "Either or Survivor" is a contract between the persons in whose names the joint account stood and the bank. If the bank therefore

were to pay the whole amount to the survivor, it gets a valid acquittance, provided of course, no order of attachment and the like intercepted. In

other words, the above agreement will in no way deter either the survivor claiming the share of the deceased as having been gifted to him or the

legal heirs of the deceased claiming it. This controversy has to be settled in a court of law only. Thus, the mere fact that the account was on the

term "Either or Survivor", the survivor would not get automatically the whole amount in the bank.

5. The immediate question is whether the petitioner has made out a case to claim the entire balance with the bank on the demise of the judgment-

debtor. The petitioner's specific case is that the whole money belonged to him and that out of respect to his father, the judgment-debtor, he

opened the said account in the joint names of judgment-debtor and himself on terms "either or survivor". Except an argument and an averment in

the counter filed by him, the petitioner has not proved his said case. The other alternative is that both the judgment-debtor and the petitioner have

equal share. In the circumstances of the case, the only inference is that both have equal share. If so the respondent is entitled to attach a moiety of

the amount in bank deposit.

6. The decision reported in S. K. Panikar v. Travancore National and Quilon Bank Ltd., AIR 1942 Mad 351 has only laid down that-

Under the law prevailing in India a deposit by a husband in the name of himself-and his wife payable to either or survivor, in the absence of

evidence to the contrary must be presumed to belong to the husband and therefore can be set off against the amount due to the Bank from the

husband.

The ratio was so settled, because the learned Judge had the undisputed fact in that case viz, the deposit in bank represented the accumulation of

the husband's salary. In this case, as already pointed out by me, the petitioner has not let in any evidence. Indeed, the burden is on him to prove

that though the account was in the joint name of himself and the judgment-debtor, the money was exclusively his. The burden is not discharged.

7. In Mrs. Avis Fitzalan Cowdrey v. Imperial Bank of India, (1955) 25 Com Cas 457: AIR 1956 Mad 56, a Division Bench of this Court held

that-

Where the surrounding circumstances in converting a personal account into an "either or survivor" account show that the deceased intended to

make a gift or provision for the survivor, the survivor would be entitled to the balance standing to the credit of the joint account.

There, originally the account was in the sole name of the deceased; also substantial evidence was adduced in proof of gift by the deceased to the

survivor. This principle has no application to the facts of this case.

8. The last contention that if at all a moiety alone is attachable is well founded.

9. Accordingly, the revision is dismissed with modification that the attachment is restricted to Rs. 18,000 and accrued interest, if any, on the said

sum. There will be no order as to costs. The Bank is directed to deposit Rs. 18,000 and accrued interest, if any within a week from this date in the

City Civil Court, to the credit of O. S. 7927 of 1976.

10. Revision dismissed.