

IN THE COURT OF THE ADDITIONAL SENIOR CIVIL JUDGE:: TIRUPATI

Present: Sri O.Venkata Nageswara Rao, B.Com., M.L.,
Additional Senior Civil Judge, Tirupati

Wednesday, the Twenty Ninth (29th) day of February,
Two thousand Eleven

O.E.P.No. 165 of 2009
O.S. No. 234 of 2003

Between

Chalapathi Chits Pvt. Ltd, Tirupati
Registered office at 5-88-1, 3rd Line,
Lakshmi Puram, having among other
branches branchat 18-1-600A, Mosque
road, Tirupati, rep by its Manager/ Foreman
P.Bhaskar Rao, S/o. P.Ramakotaiah, 35
years, residing at Tirupati.

...Petitioner/Decree holder

And

- 1 T.Subba Rao, S/o. T.Sanjeeva Rao,
Hindu, 39 years, working as Sr.T.D.A
Electrical division, B.S.N.ltd, D.R.Mahal
Road, Tirupati,
- 2 P.Lakshman, S/o. P.Seshaiah, Hindu,
40 years, residing at H.No.6-40,
Sreenivasa Puram, Tiruchanur road,
Tirupati,
- 3 G.Ramesh Kumar, S/o. G.Krishnaiah,
Hyindu, 38 years, residing at H.No.6-3,
Sathyasai Nagar,Kesavayana gunta,
Tirupati.
- 4 B.Narassinga Rao, S/o.
B.Jagannatham, Hindu, 44 years,
working as Asst. Engineer(E),
Electrical Division, B.S.N.Ltd,
D.R.Mahal Road, Tirupati, now working
at Hyderabad,
- 5 T.Chandra Kumari, W/o. T.Subba Rao,
Hindu, 31 years, residing at H.No.234,
Kesavayanagunta, Tirupati, now
working at Naidu pet, Telephone
exchange.
- 6 K.Lakshmikar Reddy, S/o. K.Jayarami
Reddy Hindu, 35 years, residing at 7-
34, Vasavi Nagar, M.R.Palli, Tirupati,
now working at Kadapa.

....Respondents/Judgment
debtors.

**E.P.Filed against Respondents 4
to 6 only**

This petition is coming before me on 27-02-2012 for final hearing in the presence of Sri K.Ramesh Babu, Advocate for petitioner/Decree holder and of Sri I.Guruswamy, Advocate for 4th respondent/Judgment debtor and of Sri K.Rajesh, Advocate for 5th respondent/Judgment debtor and of petition is dismissed against 6th respondent as per docket order, dt.,15-02-2010 upon hearing both sides, and having stood over for consideration till this day, this court made the following:-

:: O R D E R ::

This petition is filed Under Order-XXI Rules-22 and 48 of C.P.C for attachment of the salary of the respondents 4 to 6 for realisation of the decretal amount.(Subsequently, the petition against 6th respondent is dismissed as per docket order, dt.,15-02-2010).

2. The brief facts of the affidavit of the petitioner are as follows: The petitioners filed original suit and the same was decreed on 23-3-2004. Subsequently inspite of several demands made by the petitioner the respondents failed to pay the decree amount. Therefore, the petitioner prays to order for attachment of the salary of respondents 4 to 6.

3. The brief averments of the counter filed by the 4th respondent are as follows: The execution petition petition is not maintainable as the original suit is filed against a dead person i.e., 1st defendant who died on 16-9-2002. Whereas the suit is filed in the year 2003. when the principal borrower died the decree is not executable and that the E.P is liable to be dismissed. The respondent further submits that the respondent is not liable to pay any amount to the petitioner as he suppressed the facts and filed this execution petition by obtaining decree against a dead person. Therefore, the respondent prays to dismiss the petition.

4. The brief averments of the counter filed by the 5th respondent are as follows: The averments in the affidavit of the petitioner are not

correct. The respondent further submits that the other other sureties are well to do and capable persons to discharge the decree debt. The respondent is working as Attender and getting meagre salary and that she is not in a position to eke out her livelihood. The petitioner well known about the facts and filed this petition only to humiliate the respondent. The petitioner has not chosen to file the Execution petition against the respondents 2 and 3 intentionally, though they are having sufficient means and capacity to pay E.P amount. Therefore, the respondent prays to dismiss the petition.

5. At the time of enquiry on behalf of the petitioner none were examined and marked no documents. On behalf of the respondents, the 4th respondent himself examined as RW-1 and marked no documents.

5. The points that arise for consideration in this petition are as follows:

- 1 Whether the petitioner is entitled to execute the decree passed in O.S.No.234/2003 against respondents 4 and 5 ?
- 2 To what relief?

6. POINT No.1:

The learned counsel for the petitioner and respondents reiterated their contentions as mentioned in the affidavit of the petitioner and counters of the respondents during the course of arguments.

7. The petitioner filed the original suit for recovery of the amount basing on the suit promissory note and deed of guarantee and that the said suit was decreed on 23-3-2004. After the decree of the suit inspite of repeated demands made by the petitioner, the respondents failed to pay the decree amount. Therefore, the petitioner filed previous E.P.No. 142/2004 under Or.XXI Rule- 43 of C.P.C for attachment of the immovable

properties of the 3rd respondent. The said execution petition was dismissed as not pressed on 23-9-2004. Subsequently this execution petition is filed.

8. The main contention of the petitioner is that though the respondents are having means and capacity to pay the the decree amount , they failed to pay the same inspite of repeated demands. Therefore, the petitioner prays to order for attachment of the salary of the respondents 4 and 5 for realisation of the decree amount. Whereas the contention of the respondents is that the petitioner filed original suit against a dead person i.e., 1st defendant and that the decree itself is not maintainable. When the decree is not maintainable and as per Law the petitioner is not entitled to file this execution petition. Now it has to be seen whether the petitioner is entitled to file this execution petition or not?

9. The main contention of the respondents is that the original suit filed by the petitioner against a dead person and that the decree against the dead person is not executable. As per evidence of RW-1 coupled with the averments of his counter the 1st respondent who is the principal borrower-cum- subscriber of the chit died on 16-9-2002. Whereas the suit was filed on 28-6-2003 i.e., eight months after death of the 1st defendant. On perusal of the decree filed by the petitioner along with this execution petition shows that the 1st defendant died and it was recorded. But, there is no mention in the decree that the suit is abated in view of the death of 1st defendant. It is an admitted fact that the 5th respondent is the wife of the deceased 1st respondent, she is an employee who stood as guarantor along with respondents 2 to 4 and 6 to the 1st respondent for the rest of the installments amount due by the 1st respondent in connection with the chit transaction. Further, the executing court can not

go beyond the decree.

10. Sec. 47(1) of CPC extracted hereunder.

“All questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit”

A plain reading of Sec. 47(1) of CPC the executing court has to see all the questions arising with regard to the execution, discharge or satisfaction of the decree. Once the decree is passed the executing court can not give finding about the validity of the decree except for implementation of the decree. If really the contention of the respondents 4 and 5 is true and that the decree is not executable, they are at liberty to approach the appellate court by filing an appeal, and that they can obtain orders of the appellate court to set aside the decree. But the respondents have not chosen to do the same. Therefore, it can be said that the plea taken by the respondents are not tenable.

11. Further contention of the respondents 4 and 5 is that the petitioner intentionally filed this execution petition against them by leaving the respondents 2 and 3 though the respondents 2 and 3 are having sufficient means and capacity to pay the decree amount in lumpsum. The other contention of the 5th respondent is that she is working as Attender and getting meagre salary and that she is facing difficulty to eke out her livelihood. Once the decree is passed against the respondents, the petitioner is at liberty to proceed against any of the respondents against whom the decree was passed. The liability of the Judgment debtors are joint and several. Further, the petitioner is at liberty to proceed against any of the respondent for realisation of the decree amount. The respondents are not supposed to direct the

petitioner to proceed in a particular mode for execution of the decree or to proceed against a particular person. It is for the petitioner who obtained the decree to file execution petition for realisation of the decree amount, whichever mode it likes. Therefore, the arguments advanced by the learned counsel for the respondents 4 and 5 that the Execution petition is not maintainable against the respondents 4 and 5 by leaving respondents 2 and 3 is not correct. This point is answered in favour of petitioner and against the respondents 4 and 5.

12. Point No.2:

In view of the afore mentioned reasons in answering point Nos.1, the petitioner filed the original suit basing on the promissory note and deed of guarantee for recovery of rest of the installments amount in chit transaction. The said suit was decreed on 23-3-2004. In spite of repeated demands made by the petitioner, the respondents failed to pay the decretal amount. Therefore, the petitioner is entitled for execution of the decree against the Judgment debtors. The contention of the respondents is that the decree is not executable as by the date of filing of the suit the 1st respondent/1st Judgment debtor/1st defendant died can not be considered at this stage. If at all the respondents are having good grounds they are at liberty to approach the appellate court by filing the appeal to set aside the decree. But the respondents have not chosen to do the same. Once, the decree is passed the executing court can not see the validity of the decree and it has to be seen with regard to execution, discharge and satisfaction only. Therefore, the plea taken by the respondents are not tenable and that the petitioner is entitled to execute the decree. Therefore, the taken by the respondents 4 and 5 are over ruled and that the petitioner is entitled to execute the decree and he can proceed against the respondents 4 and 5 by way of attachment of

the salary of them for realisation of the decree. Therefore, the petition has to be allowed.

13. In the result, the petitioner is allowed and that the petitioner is entitled to execute the decree. Issue notice under Rule-48 of Or.XXI of CPC to the respondents 4 and 5 on payment of batta.

Dictated to the personal Assistant, transcribed by him, corrected by me and pronounced in the open court on this the 29th day of February, 2012.

Additional Senior Civil Judge,
Tirupati

Appendix of evidence

Witnesses examined on behalf of

Petitioner:
-NONE-

Respondents:
RW-1: B.Narassinga Rao

ASCJ
TPT

Draft Order in
OEP 165 of 2009
dt.29-02-2012