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March 13

PULAVARTHI VENKATA SUBBA RAO AND ORS.

v.

VALLURI JAGANNADHA RAO & ORS.

(P. B. GAJENDRAGADKAR, M. HIDAYATULLAH and J. C. SHAH JJ.)

Relief to agriculturists—Scaling down of debts—Compromise decree—Nature—Whether can be scaled down—Whether res judicata—*Madras Agriculturists Relief (Amendment) Act, 1948 (Mad. 23 of 1948), s. 16 (ii)—Madras Agriculturists Relief Act, 1938 (Mad. 4 of 1938), s. 19.*

A suit was filed in 1941 for the recovery of Rs. 50,000. The respondents prayed for the scaling down of the amount due from them under the Madras Agriculturists Relief Act, 1938, on the ground that they were agriculturists. The suit was compromised for Rs. 37,000/-. Some payments were also made.

In 1949, another application was made by the respondents for the scaling down of the debt on the ground that they were agriculturists and hence were entitled to the benefits of the Act of 1938 as amended in 1948. The contention of the decree-holder was that the Amending Act was not applicable in view of the provisions of s. 16 (ii) of the Amending Act as the compromise decree had become final. Moreover, the earlier compromise decree operated as *res judicata*. Another contention was that the judgment-debtors were not agriculturists as they were a joint Hindu family owning an estate for which a *peshkash* of more than Rs. 500/- was payable. The trial court held that the decree was liable to be scaled down in view of the provisions of the Amending Act. The matter was taken to the High Court in revision. The High Court directed the trial court to take evidence and submit its finding on the point whether the appellants were agriculturists or not. The finding of the trial court was that the judgment-debtors constituted a joint Hindu family which owned an estate for which *peshkash* of more than Rs. 500/- was payable and hence were not agricultrists.

The High Court came to the conclusion that the estat was not held jointly but in definite shares. The *peshkash* in

respect of the two villages constituting an estate could not be aggregated. Under the circumstances, the *peshkash* paid by the individual judgment-debtors did not exceed Rs. 500/- and hence the judgment debtors were agriculturists. The High Court also held that the compromise decree could not be regarded as final for purposes of s. 16 (ii) of the Amending Act, and the principle of *res judicata* did not apply. It was also held that the judgment-debtors were entitled to have the decree scaled down. The appellants came to this Court by special leave.

Held that the appeal had no merit and must fail. The judgment-debtors were agriculturits and the *peshkash* paid by them individually did not exceed Rs. 500/-. Hence they were entitled to get their debts scaled down.

Held also, that all decrees which had been executed and satisfied before the commencement of the Amending Act in January, 1949, were unaffected by the Amending Act, but all decrees which were not final and which remained to be executed, either wholly or in part, were subject thereto. However, the decree-holder was not to be required to refund any sum which might have been paid or realized by him. No distinction was made between decrees passed after contest and decrees paesed on compromise. Both kinds of decrees were amenable to the provisions of s. 19 (2) of the Act of 1938 and s. 16 (ii) of the Amending Act of 1948. The case was thus governed by s. 16 (iii) and not by s. 16 (ii).

Held also, that although the conduct of the respondents in omitting to press the claim for reduction of the amount of the claim on the first occasion was significant, yet that did not constitute *res judicata*, either statutory or constructive. The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. The compromise decree merely set the seal of the court on the agreement between the parties and the court did not decide anything. A decision of the court was not implicit in the compromise. Only a decision by the court could be *res judicata*, whether it be statutory under s. 11 of the Code of Civil Procedure or constructive as a matter of public policy on which the entire doctrine rests. The earlier decision could not strictly be regarded as a matter which was "heard and finally decided". The decree might have created an estoppel by conduct between the parties but that had not been pleaded and tried at any time.

Held also, that the Act of 1938 as amended in 1948 conferred upon the petty agriculturists the right to get their

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debts scaled down in order to save them from the oppressive loans taken at usurious rates of interest.

Arunachala Mudaliar v. *C. A. Muruganatha Mudaliar*, [1954] S. C. R. 243 and *Venakataratnam* v. *Seshamma*, I. L. R. (1952) Mad. 492, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 17 of 1959.

Appeal from the judgment and order dated April 6, 1955, of the High Court of Andhra Pradesh at Guntur in C. R. P. No. 656 of 1950.

N. Narsaraju, Advocate-General, Andhra Pradesh and *T. V. R. Tatachari*, for the appellants.

T. Satyanarayan, for the respondents.

1963. March 13. The Judgment of the Court was delivered by

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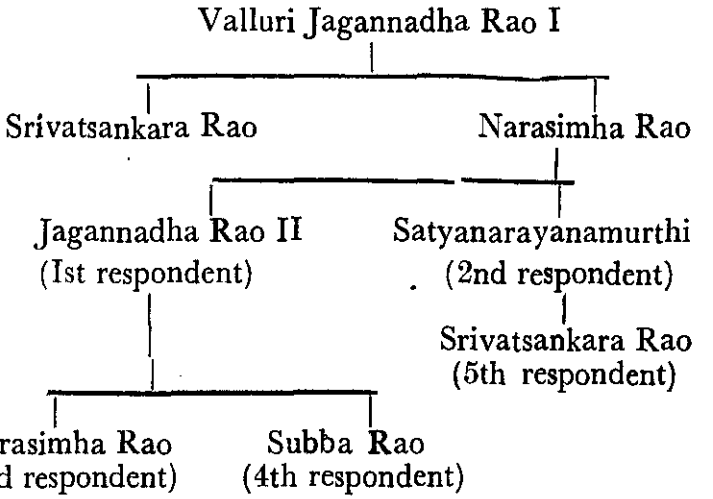
HIDAYATULLAH J.—This appeal on certificate granted by the High Court of Andhra Pradesh, is directed against its judgment dated April 6, 1955, dismissing Civil Revision Petition No. 656 of 1950. The High Court held that the respondents were agriculturists within the Madras Agriculturists Relief Act, 1938 (called for brevity "the Act") and were entitled to a scaling down of the decree in O. S. No. 52 of 1941, dated August 27, 1945. The decree-holders are the appellants before us. We will now give the facts relevant to the present appeal.

The respondents were members of an undivided

Hindu family and the following geneology is useful in following the facts :—



Narasimha Rao had taken loans on promissory notes from the ancestors of the present appellants, and a suit was filed for Rs. 50,000 odd in 1941 against the family. That suit was O. S. No. 52 of 1941. In that suit, an application was made by the respondents, claiming to be agriculturists, for the scaling down of the amount. The plaintiffs in the case denied that the defendants were agriculturists. The suit, however, ended in a compromise decree for Rs. 37,000/- on August 23, 1945, as against the claim for Rs. 50,964-1-9. It appears that some payments were also made towards this decretal amount. On February 21, 1949, the judgment-debtors made another application in the suit (Interim Application No. 279 of 1949) for scaling down the decretal amount on the ground that they were agriculturists entitled to the benefits of the Act, as amended in 1948. The decree-holders have raised three defences, (i) that the Amending Act was not applicable in view of the provisions of s. 16 (ii) of the Amending Act as the compromise decree had

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"become final" (ii) that the earlier compromise decree operated as *res judicata*, and (iii) that the judgment-debtors were not agriculturists as they were a joint Hindu family owning an estate for which a *peshkash* of more than Rs. 500/- was payable.

The Subordinate Judge, Narsapur, before whom the application was made, framed two issues as follows :—

(1) Whether the petitioners are agriculturists entitled to the benefits of the Act, and

(2) Whether the present petition is barred under s. 16 (ii) of the Amending Act—Madras Agriculturists Relief (Amendment) Act (No. XXIII), 1948.

The learned Subordinate Judge first considered the second issue which was one of law and by his order dated March 15, 1950 held that the decree was liable to be scaled down in view of the provisions of the Amending Act. He then set down the first issue for trial and posted the case for evidence on the question whether the judgment-debtors were agriculturists. The decree-holders meanwhile filed an application for revision (C. R. P. No. 656 of 1950) on April 28, 1950. The High Court heard this application on August 20, 1952, and decided to call for a a finding from the Subordinate Judge whether the judgment-debtors were agriculturists. A preliminary order was made by the High Court directing the Subordinate Judges to take evidence and to submit his finding on this point and the parties were to be given an opportunity to object to the finding after it was received. The Subordinate Judge, after recording the evidence, submitted his finding on December 17, 1952. He held that the judgment-debtors constituted a joint Hindu family which owned an estate for which a *peshkash* of more than

Rs. 500/- was payable and were thus not agriculturists.

When this finding was received in the High Court, the revision application was taken up for consideration. The High Court agreed with the Subordinate Judge that the provisions of the amending Act were applicable, that the compromise decree could not be regarded as final for purposes of cl. (ii) of s. 16 of the Amending Act, and that the principle of *res judicata* did not apply. The High Court endorsed the opinion of the Subordinate Judge that the judgment-debtors were entitled in law to have the decree scaled down, provided they were agriculturists. The High Court then considered the second question, and differing from the Subordinate Judge, came to the conclusion that the judgment-debtors were agriculturists and entitled to have the decree scaled down. The decree-holders have appealed.

Before dealing with the questions that arise in this case, a few more facts relevant to the question whether the judgment-debtors can be considered to be agriculturists or not, may be stated. The family, it is admitted, owned two villages, namely, Kalagampudi and Pedamamidipalli, which were an estate as defined in the Madras Estates Land Act. The villages belonged to Valluri Jagannadha Rao I, the original holder, and were his self-acquired properties. Jagannadha Rao I executed a will in respect of these and other properties on March 20, 1902 (exh. A 17). By that Will, he gave a life-estate in the two villages to his two sons—Valluri Srivatsankara Rao and Valluri Narasimha Rao—and an absolute estate to such of the sons of these two as might be living at the termination of each of the life estates, respectively. The will provided further that if any of his sons left no son, the sons of his other son would be absolutety entitled to the properties at the end of

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the life estate. It was also provided that if his two sons wished to divide the property, the elder son Srivatsankara Rao was to take Kalagampudi and the younger son, the other village. The two sons divided the properties in which they were given life estates, *vide*, exhibit B I dated June 14, 1911. Srivatsankara Rao took Kalagampudi and Narasimha Rao took Pedamamidipalli. Srivatsankara Rao died on December 15, 1936, without leaving a son, and Jagannadha Rao II and Satyanarayanamurthi, the two sons of Narasimha Rao, became absolutely entitled to Kalagampudi in equal shares. On February 18, 1941, Narasimha Rao executed a sale-deed (exh. A 57) in respect of two-fifth share in Pedamamidipalli village in favour of Subhadradevi, his daughter. Narasimha Rao died on May 17, 1943, and Jagannadha Rao II and Satyanarayanamurthi became entitled to a half share each in the three-fifth share in Pedamamidipalli village in addition to the half share in Kalagampudi. The judgment-debtors claimed that there was a partition between the two sons of Narasimha Rao in 1946.

The *peshkash*, which was payable for the two villages when they were in the name of Jagannadha Rao I, was Rs. 979-3-0 (*vide* exh. I A dated 6.10.1879). After the death of Shrivatsankara Rao in 1936, the two villages were separately Registered. Pedamamidipalli was registered in the name of Narasimha Rao and Kalagampudi in the name of his sons. The *peshkash* was then apportioned between the two villages and Rs. 483-12-10 was fixed as *peshkash* for Pedamamidipalli village and Rs. 495-6-2, for Kalagampudi village. This is stated in the proceedings of the Collector, West Godavari, (exh. A 4), dated April 24, 1940.

To decide whether the conclusion of the Subordinate Judge or of the High Court is right, it is necessary at this stage to read a few provisions of

the Act. 'Agriculturist' is defined by s. 3 (ii) of the Act and the relevant parts of the definition are as follows : —

> "(ii) 'agriculturist' means a person who—
>
> (a) has a saleable interest in any agricultural or horticultural land in the State of Madras, not being land situated within a municipality or cantonment, which is assessed by the State Government to land revenue (which shall be deemed to include *peshkash* and quit-rent), or which is held free of tax under a grant made, confirmed or recognized by Government ; or
>
> (b) holds an interest in such land under a landholder under the Madras Estates Land Act, 1908, as tenant, ryot or under-tenure holder ; or
>
> x x x x x x x
>
> Provided that a person shall not be deemed to be an 'agriculturist' if he—
>
> (D) is a landholder of an estate under the Madras Estates Land Act, 1908, or of a share or portion thereof, whether separately registered or not, in respect of which estate, share or portion any sum exceeding five hundred rupees is payable as *peshkash*, or any sum exceeding one hundred rupees is payable under one or more of the following heads, namely, quit-rent, jodi, kattubadi, poruppu or other due of a like nature, or is a janmi under the Malabar Tenancy Act, 1929, who is liable as such janmi to pay to the State Government any some exceeding five hundred rupees as land revenue."

The word 'person' is defined by cl. (i) of s. 3 as including an undivided Hindu family.

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The contention of the judgment-debtors was that there were two persons who were legatees under the will. They took the villages not as ancestral properties but as self-acquired properties, and the *peshkash* payable on these two villages must be divided between them before s. 3 (ii), *proviso* (D) of the Act was made applicable. The contention on the side of the decree-holders was that these properties were held by an undivided Hindu family and the sons of Narasimha Rao took the properties under the Will as ancestral properties, and the *peshkash* in respect of the two villages must be added together for the purpose of the application of the said *proviso*. The High Court held that the properties taken by the two sons of Narasimha Rao under the will were their separate properties and not ancestral properties, as there were no words to show a contrary intention. The High Court also referred to the conduct of the respondents in partitioning the villages and held that the property was held not jointly but in definite shares. The High Court, therefore, held that the *peshkash* in respect of the two villages could not be agreggated. The High Court, accordingly, broke up the *peshkash* in respect of Kalagampudi and the three-fifth share of Pedamamidipalli into two halves and held that as each son of Narasimha Rao was required to pay only his share the *peshkash* paid by them individually did not exceed Rs. 500/- mentioned in *proviso* (D), and that the judgment-debtors were, therefore, agriculturists. This part of the case was not challenged before us by the learned Advocate-General of Andhra Pradesh. Indeed, the decision of the High Court is supported by *C. N. Arunachala Mudaliar* v. *C. A. Muruganatha Mudaliar* (1), in respect of the character of the property inherited by the two sons of Narasimha Rao, and this fundamental fact could not be questioned. We must then start with the conclusion that the judgment-debtors are agriculturists. Before we consider the other objections to

(1) [1954] S.C.R. 243.

the claim of the respondents to have the decree scaled down, we will deal with another argument on this part of the case. It is contended that the High Court was in error in interfering with the finding that the respondents are not agriculturists in an application for revision under s. 115, Civil Procedure Code. This, in our opinion, is not a correct summing up of what the High Court did. The High Court had called for a finding and it was to be subject to objections by the parties. The High Court could have called for the evidence and itself given a finding. In re-examining the evidence with a view to reachiug a correct finding on the question whether the judgment-debtors were agriculturists or not, the High Court was not interfering in revision with a finding of fact, but was drawing the correct inference from evidence it had itself ordered to be recorded before considering the law applicable to the case. In our opinion, this objection has no validity.

It was next argued that the respondents cannot claim the benefit of the Act, because the compromise decree must be considered to have become a final decree and the second clause of s. 16 of the Amending Act and not the third applied, and in any event, the respondents were concluded by the compromise decree which operated as *res judicata*. To understand this argument, it is necessary to read s. 19 of the Act and s. 16 of the Amending Act. Section 19 of the Act was amended by the addition of sub-s. (2) in 1948. Section 19, as amended, reads :—

> "19 (1) Where before the commencement of this Act, a court has passed a decree for the repayment of a debt, it shall, on the application of any judgment-debtor who is an agriculturist or in respect of a Hindu joint family debt, on the application of any member of the family whether or not he is the judgment-debtor, or on the application of the

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decree-holder, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly or enter satisfaction, as the case may be :

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

(2) The provisions of sub-section (1) shall also apply to cases where, after the commencement of this Act, a Court has passed a decree for the repayment of a debt payable at such commencement."

The Amending Act also provided by s. 16 :—

"16. The amendments made by this Act shall apply to the following suits and proceedings, namely :—

(i) all suits and proceedings instituted after the commencement of this Act;

(ii) all suits and proceedings instituted before the commencement of this Act, in which no decree or order has been passed, or in which the decree or order passed has not become final, before such commencement;

(iii) all suits and proceedings in which the decree or order passed has not been excuted or satisfied in full before the commencement of this Act :

Provided that no creditor shall be required to refund any sum which has been paid to or

realized by him, before the commencement of this Act."

The contention of the appellants is that a compromise decree is a decree which finally determines the rights of the parties and the case is, therefore, governed by cl. (ii) of s. 16 and not by cl. (iii); as claimed by the respondents. There seems to have been at one time some difference of opinion in the interpretation of this section in the High Court, but the view which has prevailed is that the section applies only to those decrees which can be said to be final in contra-distinction to decrees which are merely interlocutory or preliminary. It has also been held now for a long time in the High Court that cl. (iii) governs all cases of money decrees in which the decree passed has not been executed or satisfied in full before the commencement of the Act. See *Venkataratnam* v. *Seshamma* (1). In other words, all decrees which have been executed and satisfied before the commencement of the Amending Act on January 12, 1949, are unaffected by the Amending Act, but all decrees which are not final and which remain to be executed either wholly or in part, are subject thereto, but the *proviso* states that in scaling down such decrees, the decree-holder would not be required to refund any sum which might have been paid or realised by him. No distinction is made between decrees passed after contest and decrees passed on compromise. Both the kinds of decrees are amenable to the provisions of s. 19 (2) and also of s. 16 (iii). There being no distinction between decrees passed after contest and decrees passed on compromise, the words "in which the decree or order passed has not become final" in cl. (ii) of s. 16, cannot be held to refer to a compromise decree but to decrees which are final such as final decrees for foreclosure, etc., in suits on mortgages. The prevailing interpretation of the section in the High Court is preferable in view of the generality

(1) I.L.R. 1952 Mad. 492.

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of the words used in ss. 19 (2) and 16 (iii). In any event, it would be improper to unsettle a view of law which has now become inveterate. This case was governed by s. 16 (iii), read with s. 19 (2) and the respondents were entitled to broach the question of the scaling down of the decree once again.

The appellants then seek to reach the same result by invoking the principle of *res judicata*. It is contended that the earlier decision amounts to *res judicata* and the respondents were not entitled to raise the same issue which by implication must be held to be decided against them by the compromise judgment and decree. In the alternative, it is contended that the earlier compromise decree creates an estoppel against the respondents because the appellants at that time had shown some concession in the amount which they were claiming and a decree for a lessor amount was passed. This estoppel was said to be an estoppel by judgment. In our opinion, these contentions cannot be accepted. The Act as amended confers this right upon petty agriculturists to save them from the operation of loans taken at usurious rates of interest. No doubt the conduct of respondents in omitting to press the claim for reduction of the amount of the claim on the first occasion is significant, but this did not constitute *res judicata*, either statutory or constructive. The compromise decree was not a decision by the Court. It was the acceptance by the Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the court on the agreement of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court could be *res judicata*, whether statutory under s.11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire doctrine rests. The respondents claim to raise the issue

over again because of the new rights conferred by the Amending Act, which rights include, according to them, the re-opening of all decrees which had not become final or which had not been fully executed. The respondents are entitled to take advantage of the amendment of the law unless the law itself barred them, or the earlier decision stood in their way. The earlier decision cannot strictly be regarded as a matter which was "heard and finally decided". The decree might have created an estoppel by conduct between the parties; but here the appellants are in an unfortunate position, because they did not plead this estoppel at any time. They only claimed that the principle of *res judicata* governed the case or that there was an estoppel by judgment. By that expression, the principle of *res judicata* is described in English law. There is some evidence to show that the respondents had paid two sums under the consent decree, but that evidence cannot be looked into in the absence of a plea of estoppel by conduct which needed to be raised and tried. The appellants are, however, protected in respect of these payments by the *proviso* to cl. (iii) of s. 16 of the Amending Act.

In our opinion, this appeal has no merits and must fail. It is accordingly, dismissed, but in the circumstances of the case, we make no order about costs in this Court.

Appeal dismissed.