

SELVARAJAN
v.
MEENAKSHI AMMAL

OCTOBER 5, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Tamil Nadu Agriculturists Relief Act 4 of 1938, as amended in 1973—Sections 3(iii) & 19—Scaling down of debt—Rent expressly excluded from definition of debt—Arrears of rent transformed into a debt by virtue of a decree—Whether an agriculturist is entitled to scaling down of such a debt—Held, No.

Petitioner-Appellant, an agriculturists within the meaning of the Tamil Nadu Agriculturists Relief Act 4 of 1938, as amended in 1973, claimed benefit of scaling down of arrears of rent, transformed into a debt by virtue of a decree having been granted against the father of the appellant, though his father stood as a surety for the payment of rent due and payable by one S. This application was opposed by the respondent on the ground that the petitioner is not entitled to the benefit of the Act as the decree is one for recovery of lease arrears and therefore, it is not a debt which can be scaled down.

This appeal by special leave arises from the order of the High Court rejecting the appeal. The question for determination is whether the appellant, though an agriculturist is entitled to the benefit of scaling down of such a debt u/s 19 of the Act.

Dismissing the appeal, this Court

HELD : 1.1. A reading of section 3(iii) of the Tamil Nadu Agriculturists Relief Act 4 of 1938 as amended in 1973, clearly indicates that the rent has been expressly excluded from the definition of debt and the liability of interest which was sought to be scaled down under the Act is a debt whether secured or unsecured due from agriculturists whether payable under a decree or an order of Civil or Revenue Court or otherwise. Since the principal debtor had committed default in payment of the rent to the receiver the appellant's father had undertaken to discharge that liability. In consequence both the appellant and the tenant, had suffered

A the decree which was sought to be executed. [287-G, H, 288-A]

1.2. As the 'rent' due to the landlord stood excluded from the definition of the debt, in view of the statutory charge, the benefit of scaling down of debt cannot be granted to the appellant though the appellant is an agriculturist. [288-C, D]

B

Commnr. of Income Tax, Madras v. Rajah Inngenti Rajagopala Venkata Narasimha Rayanin Bahadur Vara, (1932) 63 MLJ 20; *Ramadoss Reddiar v. Munuswami Reddiar*, (1940) 2 MLJ 825 and *Appala Subbaramiah v. Kotha Gurumma & Ors.*, (1942) 1 MLJ 290, distinguished.

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6143 of 1990.

From the Judgment and Order dated 18.1.82 of the Madras High Court in C.R.P. No. 2389 of 1979.

D

J. Ramamurthi, R. Mohan and R. Nedumaran for the Appellant.

Ms. Setia Vaidyalingam for the Respondent.

The following Order of the Court was delivered :

E

This appeal by special leave arises from the order of the Single Judge of the Madras High Court in CRP No. 2389/79 dated January 18, 1982. The case has a chequered history and the facts stated in the judgment are as under :

F

One Rajagopal Pillai, the husband of the respondent herein, died in 1948 without issues. The respondent herein instituted O.S. No. 359 of 1948, in District Munsif's Court, Thiruthuraiipoondi, as heir of her husband for recovery of possession of certain properties trespassed upon by two persons and also for an injunction in relation to certain other items. During the pendency of the suit,

G

one T.A. Madadeva Iyer was appointed as the Receiver. On 27.6.1949, the Receiver granted a lease of the properties in favour of one Sattayappa Thever, who agreed to pay 3200 kalams of paddy towards rent. On the same day, guaranteeing the performance of the obligations of Sattayappa to measure the rent as agreed, the father of the petitioner herein, Sadasiva, executed a security bond

H

in favour of the Court changing certain properties and binding himself to pay a sum of Rs. 18,000. The lessee Sattayappa committed default in the payment of the rents agreed to be paid by him and had fallen into arrears of 2587 Kalams of paddy equivalent to Rs. 17,044. The suit O.S. No. 359 of 1948, District Munsif's court, Thiruthuraiipoondi, was decreed in favour of the respondent. Thereafter, on 29.11.1951, the respondent filed I.A. No. 33 of 1952 for directing the realisation of the amounts due under the lease against the father of the petitioner and in the alternative, the relief assignment of the security bond was prayed for. On 29.3.1952, this application was allowed and on 8.1.1953, the security bond executed by the father of the petitioner on 27.6.1949 was assigned in favour of the respondent herein. On the basis of such assignment, she instituted a suit in O.S. No. 11 of 1953 for recovery of arrears against Sattayappa and Sadasiva (the father of the petitioner). On 22.12.1955, the suit was decreed against Sattayappa and in so far as the claim of the respondent against Sadasiva was concerned, her remedy was held to be by way of enforcement of the security. Thereupon on 2.1.1956, the respondent filed O.P. No. 29 of 1956 for enforcement of the security against the surety and the petitioner, among others, was also impleaded as the second respondent. Meanwhile, in 1956 there was a partition between Sadasiva and the petitioner and his sisters and the property over which the security bond was executed by Sadasiva on 27.6.1949, fell to the share of the petitioner. In I.A. No. 30 of 1976 in O.P. No. 29 of 1956, the petitioner claimed that he is an agriculturist, that he is entitled to the benefits of Tamil Nadu Act 8 of 1973 and that the decree in O.P. No. 29 of 1956 has to be scaled down. The petitioner also took up the position that though the amount sought to be realised was lease arrears the respondent was only enforcing the charge created under the security bond and therefore, the amount to be realised had nothing to do with the lease amount and therefore, the liability has got to be scaled down. This application was opposed by the respondent on the ground that the petitioner is not entitled to the benefits of the Act as he has been paying agricultural income-tax and the decree is also one for recovery of lease arrears and therefore, it is not a debt which can be scaled down. An objection that the application is also barred

A

B

C

D

E

F

G

H

A by *res judicata* was raised.

B From the said facts, it will be seen that the father of the
petitioner had guaranteed on 27.6.1949 the performance of the
obligations of Sattayappa under the lease deed executed by him in
C favour of the Receiver who was appointed in O.S. No. 359 of 1948,
D.M.C. Thiruthuraiipoondi. The execution of the security bond by
Sadasiva was to discharge the liability of Sattayappa, in the event
of Sattayappa defaulting in keeping up his obligations under the
lease dated 27.6.1949. Under s.128 of the Indian Contract Act, the
liability of Sadasiva as a surety was co-extensive with that of
Sattayappa, unless it was otherwise provided in the contract. It is
not the case of the appellant that there was a contrary provision
in the contract. That would mean that the liability of Sadasiva to
pay the rent was no less or no more than that of Sattayappa. In
other words, the liability of Sadasiva to pay the rents existed and
D extended to him at the same time as Sattayappa's. If the liability
of Sattayappa and the liability of Sadasiva are the same, then the
liability would be one for payment of rent and therefore, there
cannot be any scaling down of such a liability in accordance with
the provisions of the Act. It may be that as a result of the default
E committed by Sattayappa separate steps had been taken by the
respondent to enforce the security against Sadasiva. In other
words, the default by Sattayappa was the occasion to enforce the
liability to pay the rent against Sadasiva which had already
remained in Sattayappa as well as Sadasiva as a result of the
security bond dated 27.6.1949. The only effect of the execution of
F the security bond by Sadasiva was that it enabled the respondent
to look to Sadasiva for performance in the same manner in which
the respondent could have looked to Sattayappa for the payment
of rent. The mere circumstance that proceedings in O.P. No. 29
of 1956 had to be taken for enforcing the liability would not make
G any difference to the basis of the liability which was one for
payment of rent.

H In other words, the decree obtained in this case was one for
rent against Sadasiva himself and would therefore be outside the
definition of the word "debt".

Learned counsel for the appellant strenuously contended that the arrears of the rent, when had been transformed into a debt by virtue of a decree having been granted against Sadasiva - the father of the appellant, though his father stood as a surety for the payment of rent due and payable by the Sattayappa thevar to the Receiver who was administering the State on behalf of the Court, and when the appellant is an agriculturist within the meaning of the Tamil Nadu Agriculturists Relief Act 4 of 1938 as amended in 1973, that under s.19 of that Act the appellant is entitled to scaling down of the debt. We find no force in the contention. Debt has been defined under s.3(iii) of the Act thus:

S.3(iii) : "debt' means any liability in cash or kind, whether secured or unsecured, due from an agriculturist whether payable under a decree or order of a civil or revenue court or otherwise, but does not include rent, as defined in clause (iv) of 'Karartham' as defined in s.3 of the Malabar Tenancy Act, 1929 (Tamil Nadu Act XIV of 1930)."

Rent also has been defined under s.3 (iv):

"rent' means the rent payable by a cultivating tenant under the Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 (Tamil Nadu Act XXXIV of 1956), or under the Tamil Nadu Public Trusts (Regulation of Administration of Agricultural Lands) Act, 1961 (Tamil Nadu Act LVII of 1961) or the rent as defined by the Tamil Nadu Estates Land Act, 1908, whether a decree or order of a civil or revenue court has been obtained therefore or not, and includes interest payable thereon but does not include costs incurred in respect of the recovery thereof through a civil or revenue court or the share of the land cess recoverable by the landholder under any of law for the time being in force in this State."

A reading of the said proviso clearly indicates that the rent has been expressly excluded from the definition of the debt and the liability of interest which was sought to be scaled down under the Act is a debt whether secured or unsecured due from agriculturists whether payable under a decree or an order of Civil or Revenue Court or otherwise. Since the Principal debtor had committed default in payment of the rent to the receiver - the appellant's father had undertaken to discharge that liability.

A In consequence, both the appellant and the tenant, had suffered the decree which was sought to be executed. It is, no doubt, true as interpreted by the High Court of Madras in *Commnr. of Income Tax, Madras v. Rajah Inngenti Rajagopala Venkata Narasimha Rayanim Bahadur Vara*, (1932) 63 MLJ p.20 followed in *Ramadoss Reddiar v. Munuswami Reddiar*, (1940) 2 MLJ 825 and *Appala Subbaramiah v. Kotha Gurumma & Ors.*, (1942) 1 MLJ 290

B that when the liability has undergone the change the debtor is not entitled to the benefits of the provisions under the Act. The facts in those cases are entirely different from the facts in this case. In those cases the debt was crystalised into pronote. Debt incurred was on the basis of promissory note and a decree passed thereon was sought to be recovered in the execution proceedings. The definition of 'debt' was amended and the "rent" due to the landlord stood excluded from the definition of the debt. In view of the statutory change, interpretation given by the Madras High Court preceding the amendment would be of little assistance to the appellant. Moreover the facts mentioned above clearly makes the case distinguishable from the facts

C in those cases. In that view we cannot give the benefit of scaling down of debt to the appellant though the appellant is an agriculturist. The appeal is accordingly dismissed but in the circumstances without costs.

D

A.G.

Appeal dismissed.