(1950) 04 MAD CK 0004

In the Madras High Court

Case No : Second Appeal No. 2195 of 1946

A.L. Vr. St. Veerappa Chettiar — APPELLANT

Vs

Chinnasami alias Samba Goundan and Others — RESPONDENT

Date of Decision : 05-04-1950

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 1

Citation : AIR 1951 Mad 263 : (1942) 55 LW 817 : (1950) 2 MLJ 328

Hon'ble Judges : Subba Rao, J;Panchapakesa Ayyar, J

Bench : Division Bench

Advocate : R. Kesava Ayyangar, for the Appellant; D. Ramaswami Ayyangar and P.S. Srinivasa Desikan, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—Whether the Madras Agricul-turists Relief Act (Act IV [4] of 1938) in so far as it affected the negotiable instruments is

within the legislative competence of the Provincial Legislature, is the main question that is raised in this second appeal. The material facts that gave

rise to this appeal may be stated.

2. On 15-6-1925 one Ponnusami Goundan executed a promissory note for a sum of Rs. 2500 in favour of the plaintiff. The defendants are the

sons of Ponnuaami Goundan. The plaintiff filed the suit, O. S. No. 42 of 1944 on the file of the Subordinate Judge of Coimbatore for the recovery

of the amount due on the promissory note. The defendants inter alia contended that their father was having a long course of borrowing transactions

with the plaintiff, that the suit promissory note was the last of a series of renewed promissory notes and that if the suit debt was scaled down by

tracing it back to the original loan the whole debt would be wiped out under

Madras Act, IV [4] of 1938. In support of their contention, they

produced two promissory notes, Ex. D. 2 of the year 1921 for a sum of Rs. 2000 and Ex. D 3 of the year 1922 for a sum of Rs. 500 and claimed

them to be two of the promissory notes in renewal whereof the suit promissory note was executed. The Subordinate Judga held that it was not

proved that the suit promissory note was a renewal of Ex. D. 2 and D. 3 and therefore gave a decree on the basis of the suit promissory note with

interest at 6 1/4 per cent per annum from 1-10-1937. The appellate Court held on the evidence that the plaintiff suppressed deliberately all the

account books with a view to prevent the disclosure that more than double the original principal had been repaid by Ponnuswami. He held that the

stub promissory note way a renewal of successive pronotes in renewal of prior debts and as twice the original principal must have been paid

towards the debt the entire debt should be deemed to be discharged. The plaintiff preferred the above appeal. The Courts below also considered

the other arguments advanced by the appellants before them but it is unnecessary to notice them as they are not pressed before us.

3. Mr. Kesava Aiyaogar, the learned counsel for the appellant, questioned the validity of the Madras Agriculturists Relief Act in so far as it affected

the negotiable instruments. The validity of this particular Act has been questioned before, and this Court as well as the Federal Court had an

occasion to deal with that question. To appreciate the argument of the learned counsel it would be necessary to trace the previous state of law. The

Full Bench of this Court held in Nagaratnam v. Seshayya, ILR (1939) Mad. 151 : A. i. R. 1939 Mad 361 that the provisions of the Madras

Agriculturists Relief Act, 1938, relating to scaling down of debts and interest were within the powers of the Provincial Legislature. Applying the

well settled principles of construction they came to the conclusion that the Act related to subjects which were reserved for the Provincial

Legislature. In their view it dealt with agriculture and money lending and both the subjects were in the Provincial list. Alternatively they were also

inclined to attribute the source to contracts, a subject in the concur. rent legislative list. As the Madras Agriculturists Relief Act was reserved for

consideration of the Governor-General under the provisions of Section 107(2), Government of India Act, 1935, and received hia assent, they were of the opinion that the provisions of the Madras Agriculturists Relief Act should prevail over that of the existing law, u/s 107, Government of

India Act, unless and until the Federal Legislature thought fit to legislate in respect of the same matter. The authority of this decision was shaken by

the judgment of the Federal Court reported in AIR 1941 47 (Federal Court) . Though there are certain observations which may run counter to

those made in the Fall Bench decision that judgment really turned upon the crucial fact that in that suit, before the Act came into force the

promissory note had merged in the decree. They confined their decision to the facts before the Court and held that the Act in so far as the decree

was concerned could not be challenged as invading the forbidden field of List I no. 28. Another judgment of the Federal Court in the AIR 1945 2

(Federal Court) arising out of the Bengal Money-Lenders Act shook the very foundations of the Full Bench decision. In that case, the question

was whether the Bengal Money Lenders Act of 1940 was within the Legislative competence of the Provincial Legislature. Sections 30 to 36 of the

contained provisions limiting the amount of interest and discharge of the debtors in specified instances. Section 38 prescribed the procedure. It was

held that the rules indicated in Sections 32, 79 and 80, Negotiable Instruments Act, were among the essentials of law relating to promissory notes

and that the provisions of Sections 30, 36 and 38 of the impugned Act affected them so substantially that it would be impossible to record them as

merely amounting to an incidental encroachment on the law relating to promissory notes. Consequential on this decision, this High Court

reconsidered its previous view and held in Somayajulu v. Subba-rayudu, I. L. R. (1945) Mad. 679 : A. I. R. 1948 Mad. 203 that the Madras

Agriculturists Relief Act was ultra vires of the Provincial Legislature to the extent to which Sections 7, 8, 9 and 13 of the Act offended against

Sections 32, 79 and 80 of the Negotiable Instruments Act. A perusal of the judgment shows that the changed view was based upon the decision of

the Federal Court. Then the Central Legislature stepped in and passed an ordinance, Ordinance XI [11] of 1945 validating the Act even in regard

to negotiable instruments and that Ordinance was in force till March 1947. Meanwhile, the decision of the Federal Court in the AIR 1945 2

(Federal Court) was taken in appeal to the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., Khulna 1947 2 M. L. J. 6 : A.

I. R. 1947 and the Judicial Committee on 11-2-1917 reversed the judgment of the Federal Court and held that the Bengal Money Lenders Act of

1940 was not ultra vires of the Provincial Legislature. After a minute scrutiny of the provisions of the Act they held that the pith and substance of

the Act was money lending and, therefore, was a subject within the Provincial List. The following passage from p. 18 may usefully be extracted:

Subjects must still overlap and where they do, the question must be asked what in pith and substance is the effect of the enactment of which

complaint is made and in what list is its true nature and character to be found. If these questions could not be asked, much beneficient legislation

would be stifled at birth and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with.

Their Lordships expressed the view that the pith and substance was only money lending transaction and the promissory note was but an instrument

for securing the loan. The result of this judgment is that the view expressed in the later Full Bench of this Court in Somayajulu-v. Subbarayalu, I. L.

R. (1946) Mad, 679 : AIR 1945 Mad. 203 , is wrong, and the correctness of the decision in the earlier Full Bench judgment stands free from

obscurity. After this pronouncement, the Central Act II [2] of 1948 was passed repealing Ordinance XI [11] of 1945. In 1948 the Judicial

Committee had to deal in Attorney-General of Saskatchewan v. Attorney-General of Canada, A. I. R. 1949 P. C. 190 : (1949) 2 M. L. J. 80

with the validity of the Farm Security Act, 1944, enacted by the Legislature of the Province of Saskatchewan. The learned counsel for the

appellant strongly relied upon this decision in support of his contention that the view of the Full Bench does not hold the field any longer. The Farm

Security Act, 1944 of Saskatchewan was enacted for the protection of certain mortgagors, purchasers and lessees of farm land and the main

object of the Act was to lighten the contractual obligation of the mortgagor or purchaser of farm land in the event of the yield of grain grown upon

the land falling below the prescribed minimum. The earlier sections of the Act provided for relief of lessees also. Section 6 was concerned only

with the modification of the contractual rights of mortgagors or vendors of farm land in respect of the contractual payments due to them in the event

of a ""crop failure"". It was argued inter alia that Section 6 (2) Para. 8 was ultra vires of the Provincial Legislature of Saskatchewan because it was an enactment in relation to ""interest"" a matter which by Section 91, Head 9, British North America Act, was within the exclusive legislative power

of the Dominion Parliament. It wa3 contended on the other side that the pith and substance of para. 3 was ""property and civil rights"" a matter in

relation to which the Provincial Legislature had an exclusive Legislative power, and that in so far as para. 3 affected ""interest"" it did so only

incidentally. It was also mentioned that the subject was covered by the item ""agriculture in the Province"" within the meaning of Section 95, British

North America Act, and it was not repugnant to any Act; of the Parliament of Canada such as was referred to in that section. The Judicial

Committee held on a construction of the relevant provisions that Section 6 (2) para. 3, Farm Security Act, trenched upon the exclusive field

occupied by the Dominion by enacting Interest Act and as the trenching was not incidental it was ultra vires of the Provincial Legislature. At p. 193

the Judicial Committee say :

There is a distinction between legislation ""in relation to"" agriculture and legislation which may produce a favourable effect upon the strength and

stability of that Industry. Consequential effects are not the same thing as legislative subject-matter. It is ""the true nature and character of the

legislation""--not its ultimate economic results that matters. Here, what is sought to be statutorily modified is a contract between two parties one of

which is an agriculturist but the other of which is a lender of money. However broadly the phrase ""agriculture in the province"" may be construed

and whatever advantages to farmers the reshaping of their mortgages or agreements for sale might confer, their Lordships are unable to take the

view that this Legislation can be regarded as valid on the ground that it is enacted in relation to agriculture.

Basing his argument on the aforesaid decision in A. G. of Saskatchewan v. A. G. of Canada, A. I. R. 1949 P. C. 190 : 1949-2 M. L. J. 80 the

learned counsel argued that the first reason given by the Full Bench in Nagarathnam v. Seshayya, I. L. R. (1939) Mad. 161: A. I. R.1939 Mad.

361 that the impugned Act related to agriculture was displaced. By a comparative study of the provisions of the Bengal Money Lenders Act (Act

X [10] of 1940) and the provisions of the Madras Agriculturists Relief Act he pressed on us that the second ground of the Full Bench namely that the pith and substance of the Act was money lending was wrong. If the Act dealt with contracts, a subject falling in the concurrent list, it is

contended that the principle of pith and substance has no application, and as some of the provisions of the Agriculturists Relief Act are repugnant

to that of the Negotiable Instrument Act, the former Act to the extent of the repugnancy is void. We are unable to accept the learned counsel''s

argument that the Full Bench decision in Nagarathnam v. Sesh-ayya, I. L. R. (1939) Mad. 151: A. I. R. 1939 Mad. 361has no longer any binding

authority. It may be that the soundness of the first ground is liable to be canvassed in view of the observations of the Judicial Committee in A. G. of

Saskatchewan v. A. G. of Canada, A. I. r. 1949 P. C. 190 : 1949-2 M.L. J. 80. But it cannot be said of the other two reasons advanced by the

Full Bench in support of their conclusion. Though there are some obvious differences between the provisions of the Bengal Money-Len-dera Act

and those of the Madras Agriculturists Relief Act we cannot say that the pith and substance of the Act is not money lending. It deals with the

creditors and debtors and their mutual obligations and the fact that it confines its provisions to a part of the public, namely, agriculturists, does not

cease to make it nonetheless a legislation affecting money-lenders and money lending. Anyhow, the reasoning of the above Full Bench was not held

to be wrong in any of the subsequent judgments of either the Federal Court or the Judicial Committee. Indeed, if the pith and substance of the Act

is money-lenders and money-lending, P. K. Mukherjee v. Bank of Commerce Ltd., Khulna, 1947-2 M. L. Section 6 : A. I. R. 1947 P. C. 60 is in

itself an authority for holding that the mere fact that in regard to certain borrowings promissory notes were executed as security would not have the

effect of entrenching upon fche Dominion field.

4. There are also no merits in the third point. The learned counsel relied upon the following observations of Varadachariar J. in Meghraj v. Allah

Rakhia, I. L. R. (1942) Lah. 628 : A. I. R. 1942 27:

In the judgment of the High Court there is some discussion of the question of the ''pith and substance of the Act, but that question does not arise

when objection is taken not u/s 100 of the Constitution Act, but u/s 107(1).

We are concerned here not with Section 107 (1), but with Section 107 (2) which lays down that, Where Provincial Law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the

provisions of an earlier Dominion Law or an existing law with respect to that matter, then, if the Provincial Law, having been reserved for the

consideration of the Governor-General has received the assent of the Governor-General, the Provincial Law shall in that Province prevail, but

nevertheless the Dominion Legislature may at any time enact further legislation wish respect to the same matter.

5. In the present case, the Madras Agriculturists Relief Act has been reserved for conside- ration of the Governor-General and, therefore, the

provisions of that law shall prevail over that of the Negotiable Instruments Act which is the Dominion law. For the foregoing reasons, we hold that

Nagaratnam v. Seshayya, I. l. r. (1939) Mad. 151 : A. I. R. 1939 Mad. 361 though its authority waa questioned and to some extent shaken in the

intervening period, now holds the field and is binding on us.

6. The next question is essentially one of fact. The suit promissory note, EX. p.1. is dated 15-6-1925. The defendants contention is that the said

promissory note was the last of a series of renewed promissory notes and that if the suit debt was scaled down by tracing it back to the original

loan the whole debt would be wiped off under the Madras Agriculturists Relief Act, 1938. Before the learned Judge, EX. P. 5, a ledger

commencing from 16-6-1925 to 24-9 1930 find two cash books Ex. p-6 covering a period from 10-11-1924 to 14-11 1927 and Ex. p-7 relating

to the period from 17-8-1923 to 30-3-1925 were filed by the plaintiff. The defendants filed Ex. D-2 dated 9-6-1921 and Ex. D-3 dated 27-8-

1922 two earlier promissory notes executed by them. Exhibits p-7., P. 6 (a) and P. 6 (b) disclose that the amounts due under the earlier

promissory notes were calculated and were paid off and a fresh advance was taken by the defendant. The learned Judge, on a scrutiny of the

accounts, rightly held that it waa impossible to believe that Ponnuswami repaid the whole of the principal and the whole of the interest and then

received a further loan of RS. 2600 and the cir-cumstances made it probable that the suit promissory note was for the balance due on the two

earlier promissory notes. These inferences the learned Judge was entitled to draw on the accounts and the documents placed before him. Further, he also held that all the relevant books had been suppressed deliberately, and that it has been done to prevent the disclosure that more than double

the original principal has been repaid by Ponnuswami, On that finding he also drew the presumption against the plaintiff which he was entitled to

do. But the learned counsel contended that the presumption drawn by the learned Judge was not legally permissible in view of the decision of the

Privy Council in Ramanathan Chettiar v. Viswanathan Chettiar, 54 M. L. W. 1 : A. I. R. 1941 43. In that case the question was whether a

mortgage executed by the manager of a trading family was for necessity or whether it was taken by the mortgagee after making reasonable enquiry.

In the course of the trial the defendants filed an affidavit to the effect that accounts had been given to the panchayatdars, both of whom were dead,

and that he did not know in whose possession the documents were. The Court passed the order:

Petition by plaintiff to direct defendants 1 and 2 to discover on oath. Statements filed may be taken to be sufficient. Petition closed.

The defendants acquiessed in that order. On these facts the Judicial Committee held that the evidence acquiesced in by the respondent negatived a

deliberate withholding on the part of either defendant, that there was no reason that the appellant should have ever had the documents or have

known what they contained and, therefore, there waa no ground for any of these inferences. The circumstances in our case are not similar. The

defendants gave notice on 21-8-1944 to the plaintiff to produce their ledger books and day books in their custody, possession or power

containing entries of the money dealings which the plaintiff or his father had with Ponnuswami from the beginning of the transactions to the end.

Though the plaintiff had taken a month''s time to produce tho account books, he exceeded the time by several months, and, finally, on 9-1-1945,

filed an application for excusing the delay in producing the account books. Even then he produced only three books and said that the others were

not available and that it was necessary to search for them and get them. The Judge passed an order directing them to file the accounts, if any, after

making the necesaary aearch. The defendant did not acquiesce in this order and, cross examined the plaintiff''s clerk, P. W. l, in regard to these

accounts, and, for the first time he oame out with a different case, namely, that the account books were in the High Court. The learned Judge did not accept this evidence. In view of the changed attitude of the plaintiff in regard to the custody of the account books and other circumstances in

the case ha had drawn the presumption and we cannot say that he exercised his discretion either illegality or without jurisdiction, Even now the

appellant did not file any petition for admission of additional documents but contended himself with filing an affidavit stating the fact that the account

books were in the High Court and were taken delivery of recently. Two account books were produced, but no opportunity was given to the

advocate for the respondents to scrutinise the accounts. In the circumstances we have to accept the finding of fact.

7. In the result the appeal is dismissed with costs. In our view the judgment just delivered involves a substantial question of law within the meaning

of Article 102 of the Constitution of India. Leave granted.

