
(1972) 01 MAD CK 0014
In the Madras High Court

Armugha Gounder and Another

APPELLANT

Vs

K. Marappa Gounder

RESPONDENT

Date of Decision : 28-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5

Citation : AIR 1973 Mad 46 : (1972) 85 LW 474 : (1972) 2 MLJ 145

Hon'ble Judges : V.V. Raghavan, J

Bench : Division Bench

Judgement

V.V. Raghavan, J.—The petitioners filed a suit for recovery of Rs. 10,627.32 from the defendant being the arrears of rent.. The petitioners

had previously filed O.S. No. 244 of 1971 on the file of the District Munsif's Court, Gobichettipalayam and attached the house property belonging

to the respondent worth about Rs. 4,000. Along with the present suit the petitioners filed I.A. No. 2263 of 1971 under Order 38, Rule 5 of the

CPC for attachment before judgment of the oil engine fitted to the well on the ground that the respondent was trying to sell the oil engine, that he is

heavily involved in debts and that the plaintiffs cannot realise the decree if the oil engine is allowed to be sold.

2. The respondent (defendant) filed a counter contending that he was not trying to sell the oil engine, that the oil engine being an agricultural

implement is not liable for attachment u/s 60(1)(b) of the Code. The lower Court dismissed the application holding that the engine is not

permanently fixed to the earth, and that it is exempt from attachment u/s 60(1)(b) of the Code.

3. Against the said order the present Civil Revision Petition is filed and the contention of the learned Counsel for the plaintiffs-petitioners is that the

oil engine cannot be termed as tool of an artisan or that it is an implement of husbandry falling u/s 60(1)(b) of the Code and therefore exempt from attachment.

4. In *Udharam Dalumal v. Rozi Shambe* AIR 1939 Sind. 96 it was held that the term implement of husbandry occurring in Clause (b) to proviso

(1) to Section 60 should be interpreted in a fair and reasonable manner and with a generous spirit and not in a narrow and mean manner. In the

course of the judgment the learned Judges observed that Clause (b) should not be interpreted in so narrow a manner as to limit its application only

to such things, as wooden ploughs or bullocks, such things as are necessary to maintain the poorest type of agriculturists. Their Lordships observed

at page 96 as follows:

To argue that he should there laboriously dig the land with a shovel or bring water in a pail from the well with his own hand and so earn a miserable

livelihood for himself and his dependants, is clearly to violate the spirit and the purpose of Clause (b) to proviso (1) to Section 60, Code of Civil

Procedure, which is not intended to force agriculturists back to primitive ways but to protect them in their livelihood as agriculturists by preventing

the attachment even of those mechanical means whereby they plough and irrigate and cultivate the soil and obtain their livelihood as agriculturists.

5. There the learned Judges were concerned with a water pumping engine and ultimately the learned Judges held that a pumping engine was

necessary for the agriculturists to irrigate and cultivate their lands and earn their livelihood as an agriculturist, with the result that it was held that the

engine was not attachable. In *Dwarka Prasad Vs. Municipal Board, Meerut*, , their Lordships held that a tractor is an agricultural implement falling

under Clause (b) of the proviso to Section 60(1) of the Code. Their Lordships after considering the dictionary meaning of the principal words used

in this clause held that what this clause aims is the protection of the implements of every farmer so as to enable him to continue earning his

livelihood in the same way as he has been earning previously and there is nothing to indicate that the clause is limited to small farmers. In *Mathrabai*

Bhat and Another Vs. Kanhaiyalal Baluram Agrawal, , a Division Bench after considering *Udharam Dalumal v. Rozi Shambe* AIR 1939 Sind. 96

and *Dwarka Prasad Vs. Municipal Board, Meerut*, , held that the implements of

husbandry which can be exempted must, therefore, be such which are indispensable to an agriculturist and with which he can earn a livelihood. An internal combustion engine used for working a water-pump was held to be not indispensable for agriculture and that the water can be drawn from the well for irrigating the fields by other means also. Such mechanical appliances may no doubt enable an agriculturist to irrigate his fields conveniently and quickly. But they are not indispensable. The Madhya Pradesh Bench refused to follow the earlier decisions and held that an oil engine is not an agricultural implement falling under proviso (b) to Clause (i) of Section 60. In T.R. Punnavanam Pillai Vs. V. Muthuswami Achari, the question that arose was whether a goldsmith is an artisan within the meaning of Clause (b) and the learned Judge held that he is an artisan because he is a handicraftsman who is engaged in one of the arts or trade and makes his living by selling articles which he makes. In my opinion, the oil engine sought to be attached is not an implement of husbandry exempted from attachment. Even if the oil engine is used for the pumping out water from a well to cultivate lands, it cannot be regarded as an implement of husbandry. The principle underlying the exemption, in my opinion, is that artisans, who depend upon their livelihood on the tools which they possess or the implements of husbandry which they as agriculturists require to earn their livelihood should alone be exempted from attachment. The word "livelihood" connotes the idea of means of living or sustenance and an oil engine used as a quick mode of drawing water from a well is not indispensable to an agriculturist to cultivate his lands. No doubt, such mechanical appliances may enable an agriculturist to irrigate his lands quickly and draw more water to irrigate his fields. But on this score it cannot be said that an oil engine is indispensable for an agriculturist. Following the view expressed in Mathrabai Bhat and Another Vs. Kanhaiyalal Balaram Agrawal, I am of opinion that an oil engine does not fall under Clause (b) of proviso (1) to Section 60 of the Code.

6. In the result, the Civil Revision Petition is allowed and the plaintiffs-petitioners are entitled to have the suit mentioned property attached before judgment. There will, however, be no order as to costs.