

(1963) 02 KL CK 0004

In the High Court Of Kerala

Case No : C.R.P. No"s. 768, 785, 842, 966, 982, 995 and 1059 of 1961

Beepathumma and Others

APPELLANT

Vs

Shambhatta and Others

RESPONDENT

Date of Decision : 04-02-1963

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1958 — Section 9(3)

Citation : (1963) KLJ 260

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : K. Chandrasekharan, T. Karunakaran Nambiar, T. Chandrasekhara Menon in C.R.Ps. 768 and 785 of 1961, S. Narayanan Potti, N.K. Varkey in C.R.Ps. 842, 966 and 995 of 1961, T.S. Venkiteswara Iyer and R.C. Plappilly in C.R.Ps. 982 and 1059 of 1961, for the Appellant; K. Kuttikrishna Menon, V. Balakrishna Eradi For 4th Respondent in C.R.Ps. 768 and 785/61 and Respondents in C.R.P. 1059 of 1961, K.S. Subramonia Iyer, K. Chandrasekharan in C.R.P. No. 842 of 1961, K. Kuttikrishna Menon, A.P. Chandrasekharan in C.R.P. 966 of 1961, Government Pleader in C.R.P. 982 of 1961, N. Sundara Iyer and V.R. Venkitakrishnan in C.R.P. 995 of 1961, for the Respondent

Judgement

Madhavan Nair J.

1. The question raised in these seven Civil Revision Petitions is of the court-fee payable on applications u/s 9 sub-section (3) of the Kerala Agriculturists Debt Relief Act, 1958. The courts below have held the applications under sub-section (3) to be a species of applications under subsection (1) of section 9 of the Act which are chargeable under sub-section (4) of the section. Counsel for the applicants contend that sub-section (3) of section 9 is independent of sub-section (1), that the court-fee payable on an application under sub-section (3) is as provided in Rule 7 (2) of the Kerala Agriculturists Debt Relief Rules, 1958, or in sub-section (3) of Section 11 of the Act Notice of these Civil Revision Petitions has been given to the State and the Government Pleader is also heard on the matter, The relevant Sections of the Kerala Agriculturists Debt Relief Act 1958, as

amended by Act II of 1961 (which will be referred to hereinafter as the Act) read thus:

Section 9. (1)

Notwithstanding anything in the Indian Evidence Act, 1872, or in any other law for the time being in force, any agriculturist may apply to the Court to reopen any subsisting transaction, whether reduced to writing or not, on the ground that it is really a transaction, of debt or that the amount mentioned in the transaction is not the actual amount and may plead, adduce evidence and prove such grounds. Thereupon the Court shall ascertain whether the transaction is a debt or the amount mentioned in the transaction is the actual amount of the debt and pass an order in conformity with the other provisions of this Act.

Explanation-In this sub-section, the expression "Court" shall include any officer or authority appointed by the Government to exercise the functions of a Court under this subsection.

(2) (deleted) by Act II of 1961)

(3) Notwithstanding anything in the Indian Evidence Act, 1872, in the case of any transaction entered into on or after 1st January 1946 and purporting to be a sale of immovable property or a lease of usufructs, any agriculturist, who is a party to the transaction may plead, adduce evidence and prove that the transaction is really a debt and thereupon the amount advanced shall be deemed to be the principal of the debt and the income from the property or the value of the usufructs, as the case may, be shall, be appropriated towards interest calculated at the rate specified in section 5 on the principal and the balance, if any, towards the principal. The amount, if any, outstanding after such appropriation together with the value of improvements, if any, effected by the creditor shall be paid in accordance with the provisions of subsections (2), (3) and (5) of section 11, as if the transactions were a usufructuary mortgage and the rights of the creditor and the debtor shall be governed, as far as may be, by the provisions of the said sub-sections:

Provided that this sub-section shall not affect the rights of bona fide alienees of the creditor deriving rights before 20th November, 1957.

(4) For applications under sub-section (1) court fees shall be paid as if they were suits for the same reliefs.

Section 11. (1). Subject to the provisions of section 25, this section applies to all subsisting mortgages executed by an agriculturist at any time before the commencement of this Act and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof.

Explanation:-A mortgagee shall be deemed to be in possession of the property mortgaged to him or any portion thereof, notwithstanding that he has leased it to any person other than the mortgagor.

(2) Notwithstanding that the period of the mortgage has not expired, the mortgagor shall on application be entitled, subject to the provisions of sub-sections (3) and (4) to recover the property mortgaged on depositing in the court -

(a) one half of the mortgage amount;

(b) where payment of interest to the mortgagee has been stipulated for, in respect of the principal amount secured by the mortgage or any portion thereof, in addition to the usufruct from the property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such and there has been arrears of such interest, such arrears; and

(c) the value of improvements, if any, effected subsequent to the date of the mortgage by the mortgagee in the property mortgaged, as determined by the Court.

(3) Along with the application made under sub-section (2), the mortgagor shall pay court-fees as for a suit for redemption on the balance of the mortgage amount and the Court shall put the mortgagor in possession of the property and pass an order allowing the mortgagee to recover by sale of the mortgaged property the said balance amount in ten equal half-yearly installments together with the interest accrued due on such balance outstanding till the date of payment of each installment at five per cent per annum, the first installment being payable within a period of six months from the date on which the mortgagor recovered possession of the property mortgaged. On payment of the last installment the mortgage shall be deemed to be discharged and an order passed under this sub-section shall be deemed to be a decree.

(4).....(Not quoted here).

(5) The charge for the balance amount due to the mortgagee shall have priority over all other charges created after the date of the mortgage.

Rule 7 of the Kerala Agriculturists Debt Relief Rules, 1958 (which will be referred to hereinafter as the Rules) provided:

7. (1) An application under sub-section (1) of section 9 of the Act by an agriculturist, to re-open any subsisting transaction on the ground that it is really a transaction of debt or to establish that the amount mentioned in the transaction is not the actual amount, shall be in Form VII. Such applications shall bear a court-fee stamp of the value of 75nP.

(2) An application under sub-section (3) of section 9 of the Act for a declaration that a transaction entered into on or after 1-1-1946 and purporting to be a sale of immovable property or a lease of usufructs to be really a transaction of debt, shall be in Form VIII and shall bear a court-fee stamp of the value of 75 nP.

2. Under sub-section (1) of Section 9 it is open to an agriculturist to plead and prove any subsisting transaction to be a transaction of debt in reality and claim

consequential reliefs. Sub-section (3) provides likewise that any agriculturist who is a party to a "transaction entered into on or after 1st January 1946 and purporting to be a sale of immovable property or a lease of usufructs" may plead and prove it to be "really a debt" and claim the income of the property taken by the vendee or lessee to be re-appropriated towards interest calculated at the rate specified in Section 5 and then towards the principal of the debt, the outstanding amount, if any, being liable to be repaid in accordance with sub-sections (2), (3) and (5) of Section 11 of the Act. Though the sub-section (1) is general in its expression and comprehensive of all transactions, it appears that the sub-section (3) has taken out transactions of sales and leases of usufructs for a special treatment in sub-section (3), wherein a separate provision self-contained in all respects is enacted for them. Even the non obstante clause that in sub-section (1) is re-enacted separately in sub-section (3). The indication can only be that in regard to matters dealt with in sub-section (3), the sub-section (1) has no bearing. It then follows that sub-section (4) which relates to applications under sub-section (1) cannot govern applications under sub-section (3). Such inference becomes confirmed when we remember that different sets of applications are contemplated under sub-sections (1) and (3) of Section 9 as is evident from Rule 7(1) and (2) of the Rules, which are to be deemed part of the Act by virtue of "the Henry VIII clause" in Section 24 of the Act

3. Further, sub-section (3), of section 9, as amended in 1961, contains its own provision for levy of court-fee on applications under it. The sub-section requires sales and leases coming within its ambit and proved to be really "debts" to be treated as usufructuary mortgages for the sums advanced and interest thereon less the income taken under the transaction and the rights of the parties to be adjudged under sub-sections (2),(3) and (5) of Section 11 of the Act. Subsection (3) of Section 11 requires the applicant to pay court-fee on one-half of the mortgage amount. It then follows that applications under sub-section (3) of section 9 should also bear the same court-fee.

4. Counsel for the applicants contended that under Rules 7(2) of the Rules, an application under sub-section (3) of Section 9 need bear a court-fee of 75 nP. only. The Rules are dated 5th November 1958, obviously before the amendment in the Act which came to be in 1961 only. Under the original Act there was no provision regarding court-fee in regard to applications u/s 9. In regard to other applications, court-fee was provided for in Sections 8 and 11 of the Act. It was in such circumstances that the Rules came to prescribe court-fee for applications under sub-sections (1) and (3) of Section 9 of the Act. But, the amending Act II of 1961 has added sub-section (4) to Section 9 to prescribe court-fee chargeable on applications under sub-section (1) thereof, and incorporated sub-section (3) of Section 11, which contains a provision for court-fee, in subsection (3) of Section 9, and thus made its own provisions in supersession of the Rule 7. "The cardinal rule in regard to promulgation of by-laws or making rules" observed the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, "is that they must be *legi fidei rationi consona*, and therefore all regulations which

are contrary or repugnant to statutes under which they are made are ineffective". Hence, even though the Rule 7 has not been removed from the Rules, the addition of sub-section (4) to Section 9 and the incorporation of sub-section (3) of Section 11 in sub-section (3) of Section 9 must be held to have abrogated it. No reliance can therefore be had in Rule 7 of the Rules after the commencement of the amending Act, II of 1961. It is also contended that Section 9 contemplates only a declaratory relief and therefore the prescription of court-fee in sub-section (3) of Section 11 to an application for discharge of a debt cannot be applied to applications under sub-section (3) of section 9. Reliance was placed on the Forms of Applications prescribed under the Rules in this regard. But in C.R.P. 1281 of 1960 I have had occasion to point out the emptiness of another Form in the Rules and hold that the forms given merely as models for drafting cannot be taken as guides to the meaning of the statute, following the weighty observations of Blagden J. in *Ma Tin Tin v Maung Ayo* (A.I.R. 1941 Ran 135, 140) and of Wadsworth and Patanjali Sastri JJ. in *Pandiri Sarveswara Rao v Maturi Umamaheswara Rao* (A.I.R. 1941 Mad 152). To me it appears incorrect to say that Section 9 of the Act is designed for declaratory reliefs. Being an Act designed to give relief to indebted agriculturists, its provisions aim at practical reliefs in discharge of indebtedness. Sub-section (1) of Section 9 provides for reopening any transaction and exposing it as one of debt and then passing "an order in conformity with the other provisions of this Act"; which, in the context, can only be for the discharge of the newly exposed debt under the beneficent provisions of the Act. Sub-section (3) also provides likewise to rend the camouflage of certain transactions to expose their real nature of debt and to have them discharged as provided in the sub-section. It is then clear that neither sub-section (1), nor sub-section (3) is for a mere declaratory relief, and that the contention has to be overruled.

For relief in respect of usufructuary mortgages a certain court-fee is charged under sub-section (3) of Section 11. It would appear inconsistent then to say that in respect of sales and leases of usufructs, which are to be treated as usufructuary mortgages under sub-section (3) of Section 9, the court-fee is different and nominal only. The incorporation of sub-section (3) of Section 11 in sub-section (3) of Section 9 must be given its full effect; and it would then have the merit of consistency in the charge of court-fees in like matters.

In the result, I hold that applications under sub-section (3) of Section 9 are chargeable with court-fee as provided in sub-section (3) of Section 11. The orders impugned in the Civil Revision Petitions are discharged and the courts below directed to assess the court-fees payable on the respective applications in the light of my observations above.