(1961) 09 KL CK 0028

In the High Court Of Kerala

Case No : C.R.P. No. 995 of 1959

Chandu Nair and Another — APPELLANT

Vs

Abdulkhader — RESPONDENT

Date of Decision : 20-09-1961

Acts Referred:

Kerala Agrlculturists Debt Relief Act, 1958 — Section 2(c)(vi)

Citation : (1961) KLJ 1371

Hon'ble Judges : M.A. Ansari, C.J

Bench : Single Bench

Advocate : T. Chandrasekhara Menon and A.V. Krishna Rao, for the Appellant; N. Sundara Iyer, V.R. Venkitakrishnan, K. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—The revision petitioners are the decree-holders, and seek to revise the orders by the lower courts u/s 7 of the Kerala Agriculturists Debt Relief Act, No. XXXI of 1958, hereafter referred to as the Act. The ground taken in the revision petition is that the debt has been exempted from the operation of the Act, and the two lower courts have erred in exercising powers under the aforesaid Section. It is not disputed that the parties to this petition with one Purushothama Pai, were partners and the firm was dissolved by a document, which is dated February 24, 1955. The parties had in the aforesaid deed divided the assets into two schedules, A and B, and further provided the properties in the A schedule to go to the partner, who is the respondent in this petition, and in B schedule to the other three partners. The value of the properties set apart in the A schedule was fixed at Rs. 18,499-10-3; and, after deducting what would be the shares in them of the person, to whom the properties were being given, Rs. 9,228-1-8 was found to be the value of others'' shares, and after adding other amounts due from the respondent to the latter sharers, Rs. 10,799-9-8 was found to be due from the respondent, which was charged on the A schedule properties and made also personally recoverable. The properties so valued comprised a bus, the goodwill of the firm, furniture, cash in hand, and amount in the Canara Industrial and Banking Syndicate. It is obvious that apart from the last two items, whose total came only to Rs. 37-8-0, the other properties of the A schedule were the shares of the partners in movables. The respondent, not having paid the partners entitled to the aforesaid amount, who are the revision petitioners, filed O.S. 317/57 and obtained a decree. The respondent thereafter applied u/s 7 of the Act, claimed to be an agriculturist, and asked the decree to be amended as required by the Act. The revision petitioners objected on the ground that the debt due from the judgment-debtor was exempt from the definition of the word ''debt'' u/s 2(c)(vi), but the objection has been rejected. Hence this petition.

2. The petitioners'' learned advocate has urged that the shares of the partners in the assets of the partnership are goods, the respondent having got these shares by agreement, the money due is, therefore, price, and the goodwill as well as the bus has been bought for the purposes of carrying on the business. In these circumstances, the price is the exempted debt and the decision asked to be revised is incorrect.

3. It would be of advantage to have the legal provisions before I decide the question. Section 2(c)(vi) reads as follows:

2. In this Act, unless the context otherwise requires

(c) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract or under a decree or order of any Court, or otherwise, and includes any debt or balance of debt due at the commencement of this Act, under the Madras Indebted Agriculturists (Re-payment of Debts) Act, 1955, or the Travancore-Cochin Indebted Agriculturists Relief Act, 1956, but does not include-

(vi) any debt which represents the price of goods purchased for the purpose of trade :

What amounts to sale has been stated in The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd., in these words:

Thus according to the law both of England and of India, in order to constitute a sale it is necessary that there should be an agreement between the parties for the purpose of transferring title to goods which of course pre-supposes capacity to contract, that it must be supported by money consideration, and that as a result of the transaction property must actually pass in the goods. Unless all these elements are present, there can be no sale.

It is obvious that the respondent could not get complete title in the bus, nor in the goodwill, nor in the furniture, except under the deed. It is equally clear that the deed is an agreement arrived at by all the parties, and it amounts to a contract. It is further clear that the properties had been given to the respondent upon his paying the value of the shares in those properties of his copartners which thus became the price; and, but for an insignificant liability, the bulk of the price is for purchasing the goodwill, furniture, and the bus to do business. In these circumstances, the debt is substantially one covered by the exception; and, in these circumstance, I am convinced that the lower courts have erred in granting the application u/s 7 of the Act. The application is accordingly dismissed with costs throughout, and the revision petition is allowed.

