
(1963) 04 KL CK 0003

In the High Court Of Kerala

Case No : C.R.P. No's. 492 and 910 of 1961 and 195, 198 and 220 of 1962

Cherayathu Paul and Others

APPELLANT

Vs

Dharmodhayan Company, Trichur and Others

RESPONDENT

Date of Decision : 04-04-1963

Acts Referred:

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

Citation : AIR 1964 Ker 198

Hon'ble Judges : M.S. Menon, C.J;T.C. Raghavan, J;M. Madhavan Nair, J

Bench : Full Bench

Advocate : George Vadakkal and Varghese Kalliath, in C.R.P. No. 492 of 1961, C.K. Viswanatha Iyer, in C.R.P. No. 910 of 1961, M.C. Sreedharan, in C.R.P. No. 195 of 1962, M.C. Sreedharan, in C.R.P. No. 198 of 1962, M.C. Sreedharan, in C.R.P. No. 220 of 1962, for the Appellant; C.A. Ouseph and C.J. Antony, in C.R.P. No. 492 of 1961, Subramonian Potti and S.A. Nagendran, in C.R.P. No. 910 of 1961, S. Gopalakrishna Iyer in C.R.P. No. 195 of 1962, P. Subramonian Potti and S.A. Nagendran, in C.R.P. No. 198 of 1962, for the Respondent

Judgement

Madhavan Nair, J.—The common question in these C. R. Ps. is of the court-fee payable on applications u/s 9 (3) of the Kerala Agriculturists Debt Relief Act, 1958, which may hereinafter be referred to as the Act. In Beepathumma v. Shambhatta 1963 Ker LJ 260 one of us (Madhavan Nair, J.), has expressed that such court-fee must be as prescribed in Section 11 (3) of the Act; but in C. R. P. No. 910 of 1961 another of us (Raghavan, J.) felt that such applications are a species of applications u/s 9 (1) and might therefore require court-fee as prescribed in Section 9 (4) of the Act, and referred the matter for consideration by a Bench; and it has now been placed before this Full Bench by the learned Chief Justice.

2. Several aspects not been considered in 1963 Ker LJ 260 have been brought to bear on the question and in their light we think that the position has to be reconsidered,

3. The first question is whether applications under Sub-section (3) of Section 9 are a species of applications under Sub-section (1) thereof. We think the answer must be in the negative. Section 9 of the Act reads thus:

"9. Eight to prove nature of transactions.-

(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 re-open 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 sub-section.

(2) (omitted 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, out standing after such appropriation together with the value of improvements, if any, effected by the creditor shall be paid in accordance with the provisions of Sub-sections (2), (3) and (5) of Section 11, as if the transaction 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." Sub-section (1) enables an agriculturist to reopen "any subsisting transaction" to show that it is really a transaction of debt and, if that be established, to discharge it by payment in accordance with Section 4 of the Act. Sub-section (3) provides that a sale or a lease of usufructs, if made on or after the 1st January, 1946, by an agriculturist, may be proved to be really a transaction of debt and, if that be established, to have the same discharged under Sub-sections (2), (3) and (5) of Section 11 of the Act, as if it was a mortgage of the property or its usufructs. In the context of these sub-sections, a

distinction has to be kept between subsisting transactions and concluded transactions of the nature of sales. It may be pertinent to note here that a lease of usufructs, which is really an arrangement by which the usufruct of a property is allowed to be taken in recoupment of in advance given or promised, is in essence a sale of the future usufructs of the property for an agreed price which is called rent. We may therefore, re-state that, while Sub-section (1) relates to subsisting transactions, Sub-section (3) relates to concluded transaction of sales of immovable property or of its usufructs. Both are allowed to be re-opened in spite of the trammels of Sections 91 and 92 of the Evidence Act. If really they are transactions of debt they may be exposed and discharged. But the mode of discharge may again depend on the nature of the transaction which is reopened. If it was a subsisting transaction, under Sub-section (1), it may be discharged in 17 equal instalments as mentioned in Section 4 of the Act. But if it was a concluded transaction, under Sub-section (3), it must be discharged by payment of one-half of the outstanding amount in the first instance and the remainder in 10 equal instalments as mentioned in Section 11 of the Act. The two sub-sections of Section 9, which are apparently self contained provisions, thus involve distinct matters for which they provide different consequences. Section 23A provides for appeals, against orders under Sub-section (1) or Sub-section (3), indicating thereby that the proceedings under the two sub-sections are different from each other, Rule 7 (1) of the Kerala Agriculturists Debt Relief Rules, 1958, deals with applications under Sub-section (1) of Section 9 and Rule 7 (2) deals with applications under Sub-section (3). Separate forms are prescribed by the Rules for applications under Sub-section (1) and Sub-section (3). The indication is thus clear that the Legislature has meant proceedings under Sub-sections (1) and (3) of Section 9 of the Act as two distinct proceedings.

4. The question then arises what is the court-fee payable on applications under Sub-section (3) of Section 9 of the Act.

Rule 7 of the Kerala Agriculturists Debt Relief Rules, 1958, which is still current, runs thus:

"7 (1) An application under Sub-section (1) of Section 9 of the Act by an agriculturist, to reopen 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 application shall bear a court-fee stamp of the value of 75 nP."

(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."

As per the above rule, the court-fee for an application whether under Sub-section (1) of Section 9 or under Sub-section (3) thereof, is 75 nP. only. But, the Act II of

1961, adding Sub-section (4) to Section 9, has prescribed an advalorem court-fee to applications under Sub-section (1) thereof, and to that extent must be held to have impliedly repealed Rule 7 (1) quoted above. What is material here is that even that Amendment Act has not in any way affected Rule 7 (2) which, by virtue of the Henry VIII clause in Section 24 of the Act, has to be deemed part of the Act itself. It then follows that an application under Sub-section (3) of Section 9 of the Act need bear a court-fee of 75 nP. only.

5. The learned Government Pleader pointed out that our conclusion would lead to an obvious anomaly, namely that applications to have possessory mortgages discharged u/s 11 of the Act should bear ad valorem court-fee on one-half of the debt, but in the case of sales deemed to be possessory mortgages and allowed to be discharged under the identical provisions of Section 11 of the Act the applications need bear only a court-fee of 75 naye paise. It may be so. But, as observed by the Supreme Court in *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, :

"if on its construction a statute leads to anomalous results, the Courts have no option but to give effect to it and leave it to the Legislature to amend and alter the law."

6. In the result, the rule laid down in 1963 Ker LJ 260 is overruled; and the court-fee leviable on applications under Sub-section (3) of Section 9 of the Kerala Agriculturists Debt Relief Act, 1958, is declared to be 75 nP. only as provided in Sub-rule (2) of Rule 7 of the Kerala Agriculturists Debt Relief Rules, 1958.

7. C. R. P. No. 492/1961. Though the petitioner has paid court-fee of Rs. 10/- on his application u/s 9 (3) of the Act, the Subordinate Judge, Trichur, has directed him to amend his application to claim reliefs provided for in Section 11 of the Act so that the court-fee as provided in Sub-section (3) of Section 11 may be charged thereon. Section 9 (3) expressly enacts that on proof that an apparent sale executed by an agriculturist was really a transaction of debt, the vendor can redeem the property under Sub-sections (2), (3) and (5) of Section 11 as if the transaction was a usufructuary mortgage". No formal amendment of the application as directed by the Court below is called for. The impugned order is therefore discharged, and the court-fee paid is declared more than sufficient.

8. C. R. P. 910 of 1961. The petitioner herein has been directed by the Subordinate Judge, Kasaragod, to pay court-fee as provided in Sub-section (4) of Section 9 even though his application is under sub-section (3) thereof. In the light of our ruling supra that direction has to be discharged. Order accordingly.

9. C. R. P. Nos. 195, 198 and 200 of 1962. The petitioners herein have been directed by the Munsiff, Kasaragod, to pay court-fee under Sub-section (4) of Section 9 of the Act and for non-compliance of that direction their applications under Sub-section (3) of Section 9 have been dismissed, with costs. In the light of our ruling above, the direction to pay court-fee under Sub-section (4) was unwarranted and the dismissal of the applications wrong. The orders impugned in

these C. R. Ps. are vacated, and the applications of the petitioners remitted to the Court below for fresh disposal on their respective merits.

10. We do not make any order as to costs in any of these C. R. Ps. disposed of above.