

(2008) 10 SC CK 0067

In the Supreme Court Of India

Case No : Civil Appeal No's. 5267-69 of 2002

Chinnakarupathal and Others

APPELLANT

Vs

A.D. Sundarabai (dead by Lrs.) and Others

RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89, Order 34 Rule 5, 144, 145, 151
Tamil Nadu Agriculturists Relief Act, 1938 — Section 19A, 23A, 23C, 7, 8

Citation : AIR 2009 SC 709 : (2008) 11 JT 605 : (2009) 2 MLJ 764 : (2008) 105 RD 712 : (2008) 13 SCALE 656 : (2009) 1 SCC 86

Hon'ble Judges : R. V. Raveendran, J;Aftab Alam, J

Bench : Division Bench

Advocate : B. Sridhar and K. Ram Kumar, for the Appellant; P. Viswanathan Shetty S. Srinivasan, R.N. Keshwani, K.V. Viswanathan, Venkatesan, P.V. Yogeswaran, M.A. Chinnasamy and V. Malathy, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—One Ammasai Gounder filed a suit against A.T. Krishnasami Mudaliar and another for recovery of amounts due towards supply of jaggery in O.S. No. 226 of 1946 on the file of the Sub-Court, Coimbatore. The suit was decreed on 14.10.1947. The defendants in the suit filed an appeal in the Madras High Court in A.S. No. 713 of 1947. On an application by the defendants (appellants in that appeal), stay of execution of the decree was granted subject to the defendants depositing the decretal amount in court. The High Court permitted the plaintiff (respondent in that appeal) to withdraw the said decretal amount after furnishing security to the satisfaction of the court. One Ramaswami Gounder became the surety and gave his agricultural lands as security for the amount permitted to be withdrawn by the plaintiff.

2. The appeal by the defendants was allowed by the High Court on 31.10.1952 and the money decree granted in O.S. No. 226 of 1946 was set aside. Consequently, the defendants in the suit moved an application for restitution u/s

144 of the CPC ('CPC' for short). The plaintiff did not repay the amount withdrawn by him and absconded. Therefore the defendants filed E.P. No. 134/1957 for recovery of the amount by sale of the lands offered as security by Ramaswami Gounder. The lands offered as security were sold by auction on 16.11.1960 and 6.9.1961. The fifth Respondent and predecessors of respondents 6 to 26 are stated to be the auction purchasers.

3. During the pendency of the said execution proceedings, the surety Ramaswami Gounder died and his widow Rajammal was impleaded as his legal representative. On 14.12.1960, Rajammal moved an application (EA No. 148 of 1961) under Order 21 Rule 89 CPC for setting aside the auction sale. But she did not deposit the amount mentioned in the sale proclamation nor the amount equal to 5% of the purchase money, as required under the said rule. By order dated 17.9.1966, her application for setting aside the sale was rejected. Rajammal challenged the said dismissal before the High Court in CMA No. 337 of 1966. The High Court by its judgment dated 26.8.1971 dismissed the appeal of Rajammal and confirmed the order of the Executing Court. Rajammal challenged the said judgment in an appeal by special leave before this Court (CA No. 382 of 1973). During the pendency of the said appeal, Rajammal moved an application for scaling down the debt and setting aside the auction sale under the provisions of the Tamil Nadu Agriculturists Relief Act, 1938 ('Act' for short). This Court by order dated 7.11.1986 dismissed Rajammal's appeal, but however, referred the application for scaling down the debt and setting aside the sale under the Act, to the Subordinate Court, Coimbatore, for disposal in accordance with law.

4. It is stated that Rajammal settled the lands which had been offered as security, as also some other properties in favour of one Chinna Pappu Gounder, brother of her husband Ramasami Gounder under registered settlement dated 3.6.1960. The appellants herein are the legal heirs of the said Chinna Pappu Gounder. When the matter referred by this Court was received by the Executing Court, Rajammal and the appellants herein filed the following three applications:

(i) EA No. 1612 of 1987 under 19A of the Act for determination of the amount to be paid by them to the decree holders (defendants in the suit) by scaling down the amount under Sections 7 and 8 of the Act.

(ii) EA No. 1613 of 1987 u/s 23C of the Act for setting aside the court auction sale held on 16.11.1960 and 6.9.1961.

(iii) EA No. 782 of 1988 under Order 34, Rule 5 read with Section 151 of CPC for fixing the date of depositing the amount found due by the legal representatives of the surety.

The said three applications were dismissed by the Executing Court by a common order dated 22.9.1992. It held that as the amount claimed in the execution petition was by way of restitution u/s 144 CPC by enforcing the security u/s 145 CPC, neither Section 19A nor Section 23C of the Act was attracted. The court also held that the amount recoverable by restitution secured by the properties of

the surety Ramasami Gounder, was not a mortgage debt and therefore the provisions of Order 34 CPC were not attracted. The executing court was of the view that the remedy if any of the surety or his legal representatives was only by an application under Order 21 Rule 89 CPC and that remedy had already been exhausted on account of rejection of the application filed under the said provision.

5. The said order was challenged by the Appellants in CRP Nos. 3162-64 of 1992. The High Court was of the view that consideration of other two applications would depend upon the decision on the application u/s 23C of the Act. The High Court therefore considered the said application first. It held that Section 23C would apply only where immovable properties of an agriculturist were sold or foreclosed on or after 1.3.1972; and as the sale in this case took place in the year 1960 and 1961, the said section could not be invoked. Consequently, it found no error in the rejection of the three applications. The High Court, therefore, by its order dated 26.2.1998, dismissed the said revision petitions which is challenged in this appeal by special leave.

6. The application under Rule 5 of Order 34 CPC was misconceived, as the proceedings did not relate to a mortgage suit. Section 145 of CPC provides that where any person has furnished any property as security for the payment of any money (or for the fulfillment of any condition imposed on any person) under an order of a court in any suit or in any proceedings consequent thereon, such order may be executed in the manner provided in the Code for the execution of decrees, by sale of such property. Consequently, the recovery of the amount due to the defendants was governed by Sections 144 and 145 read with provisions of Order 21 CPC. The provisions of Order 34 CPC were inapplicable and there was no question of invoking Rule 5 of Order 34 to fix a date for depositing the amount due. The application under Order 34 Rule 5 CPC was rightly rejected.

7. The application u/s 19A of the Act was also misconceived and rightly rejected. Section 19A of the Act provides for filing an application for the determination of the amount of debt due by an agriculturist. But the said section applied only in regard to debts of an agriculturist other than a decree debt. Having regard to the definition of the term 'decree', any amount recoverable u/s 144 read with Section 145 CPC by way of restitution, will also be a decree debt.

8. Insofar as the application u/s 23C of the Act, learned Counsel for appellant submitted that the application was intended to be one u/s 23A of the Act, but due to a typographical error, the provision of law was wrongly mentioned as Section 23C. Though such a contention was not urged before the High Court, we permitted him to urge the contention. Section 23A of the Act reads as under:

23-A. Power of Court to set aside sale of immovable property in certain cases - Where in execution of any decree, any immovable property, in which any person entitled to the benefits of the Tamil Nadu Agriculturists Relief (Amendment) Act, 1948, had an interest, has been sold or foreclosed on or after the 30th September, 1947, and the sale has not been confirmed before the

commencement of the said Act or ninety days have not elapsed from the confirmation of the sale or from the foreclosure, at such commencement, then, notwithstanding anything contained in the Indian Limitation Act, 1908 Now the Limitation Act, 1963 (Central Act 36 of 193), or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment-debtor claiming to be entitled to the benefits of the said Act, may apply to the Court within ninety days of such commencement or of the confirmation of the sale, whichever is later, to set aside the sale or foreclosure of the property, and the Court shall, if satisfied that the applicant is a person entitled to the benefits of the said Act, order the sale or foreclosure to be set aside, and thereupon the sale or foreclosure shall be deemed not to have taken place at all:

Provided that no such order shall be made without notice to the decree- holder, the auction-purchaser, and other persons interested in such sale or foreclosure and without affording them an opportunity to be heard in the matter.

[emphasis supplied]

The fact that agricultural lands were sold in an auction and that the owners of such lands were agriculturists, are not by themselves sufficient to invoke the exercise of power u/s 23A of the Act. The court can set aside a sale of immovable property under the said section only if the court is satisfied that the applicant is a person entitled to the benefits of the Act.

9. As noticed above, the only benefit claimed by the appellants under the Act was scaling down of the debt and determination of the scaled down amount. We have already held that the said application was not maintainable. The appellants have not been able to demonstrate how they are entitled to any of the benefits under the said Act. A perusal of the Act shows that the reliefs that can be granted under the Act are: scaling down of debts and rates of interest; relief in regard to the usufructuary mortgages; concessions in regard to interest payable by agriculturists on loans; conditional discharge of arrears of rent due to land holders and scaling down of interest on arrears of rent. But none of these are applicable to the recovery by way of restitution, by enforcing the security. Scaling down of the debt is permissible only where the amount paid or payable by way of principal and interest is more than twice the amount of the principal. That does not apply in this case. This is not a case of usufructuary mortgage. Nor is any interest payable on any loan. Nor is the claim for any rent payable. Therefore, we are not satisfied that appellants are persons entitled to the benefits of the Act. In the absence of such satisfaction, the question of setting aside the auction sale u/s 23A of the Act does not arise. The rejection of the three applications is proper. As a consequence, the auction sales will have to be confirmed in favour of the auction-purchasers.

10. The appeals have no merit and are accordingly dismissed.