

(1995) 01 MAD CK 0028
In the Madras High Court

Dhandapani Naidu

APPELLANT

Vs

The Debt Relief Special Tahsildar and Others

RESPONDENT

Date of Decision : 04-01-1995

Acts Referred:

Constitution of India, 1950 — Article 366

Citation : (1995) 2 LW 627 : (1995) 1 MLJ 515 : (1995) WritLR 670

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The petitioner is aggrieved by the orders passed by the Debt Relief Special Tahsildar and the Revenue Divisional Officer,

holding that the third respondent herein is a debtor within the meaning of the Tamil Nadu Act 31 of 1976. The petitioner got a mortgage from the

third respondent's father on 19.9.1973 by lending a sum of Rs. 2,000. The subject matter of the mortgage is the land in S. No. 39/1, Part 1 acre

28 1/2 cents in Vanapuram village and an extent of 50 cents in S. No. 117/3 and another in S. No. 117/3 of 50 cents in Edukanur village. The

mortgage deed expressly refers to the well situated in the land as well as the baling instruments and the customary right to take water in a channel.

According to the mortgage deed, the mortgagor has one half right in the well, baling instruments and in the channel rights which were made subject

matter of the mortgage.

2. The third respondent applied to the Tahsildar, the first respondent claiming that he was a debtor under the Act and the debt must be declared to

have been discharged. The Tahsildar, held an enquiry and recorded the statement made by the Revenue Inspector in 10/1 Chitta. According to

that statement, the land was purchased by the third respondent's father excluding the rights in the well. But the third respondent did not file either the copy of the sale deed under which his father purchased the property or any other document to show that he had no right in the well. Though, the petitioner herein relied upon the deed of mortgage, the Tahsildar made a callous remark that the mortgage would have been executed by the third respondent's father making a false recital in the document. On that footing, the first respondent passed an order declaring that the property was released from the mortgage, as the third respondent had satisfied the definition of "debtor" u/s 3(f) of the said Act.

3. On appeal, the second respondent has not even chosen to apply his mind to the facts of the case. He merely stated that the petitioner herein repeated the contentions which were urged before the Tahsildar and added that the same were rejected. The order of the appellate authority cannot even be considered to be an order in the true sense thereof.

4. The view taken by the Tahsildar is clearly unsustainable when the registered mortgage deed is produced by the petitioner, it is not open to the Tahsildar to say that the recitals therein would have been false, without any evidence or plea in support thereof. The order of the Tahsildar does not say that the third respondent's contention is that the document contained a false recital. The burden was on the third respondent to produce the sale deed under which his father purchased the property to show that his father had no right in the well. In such circumstances, the Tahsildar is in error in assuming that the mortgage deed contains a false recital and the third respondent did not have any facilities for irrigation of the land.

5. Section 3(f) of the Act defines ""debtor"" as follows:

debtor"" means:

- (i) a landless agricultural labourer, or
- (ii) a rural artisan, or
- (iii) a small fanner,

who has borrowed or incurred any debt before the commencement of this Act.

Debtor"" means a landless agricultural labourer or a rural artisan or a small farmer who has borrowed before the commencement of the Act. It is

the claim of the third respondent that he falls within the third category as he is a

small farmer. A "small farmer" is defined u/s 3(1) of the Act as follows:

Small farmer" means a person whose principal means of livelihood is income derived from agricultural land and who holds, whether as owner, tenant, or mortgagee with possession, or partly in one capacity and partly in another:

(i) not more than two units of land in a case where such person is a member of any of the Scheduled Tribes; and (ii) not more than one unit of land, in any other case.

Explanation I: for the purpose of this Clause, "Scheduled Tribes" shall have the meaning assigned to it in Clause (25) of Article 366 of the Constitution.

Explanation II: where any person holds as aforesaid more than one category of land referred to in Clause (6) then, for the purpose of calculating

the extent of land held by him, two hectares of unirrigated land shall be deemed to be equal to:

(i) half hectare of land having facilities for growing one irrigated crop:

(ii) half hectare of land used for growing any plantation crop or grapes or coconut or are cannot or mulberry:

(iii) quarter hectare of land having perennial irrigation facilities or having facilities for growing more than one irrigated crop in a year.

Explanation III: In this clause and in Clause (o) (a) "Irrigated" means irrigated from any source, whether Government or private:

(b) "plantation crop" means cardamom, cinchona, coffee, rubber or tea:

A "Unit of land" is defined in Section 3(o) of the Act as two hectares of unirrigated land or half hectare of land having facilities for growing one

irrigated crop. It is not necessary to refer to the remaining part of the definition. We have already seen that the word "irrigated" has been defined in

Explanation III to Section 3(1) of the Act. Thus, the well situated on the land is a source of irrigation for the land. Consequently, the third

respondent who is found to be owning an extent of 4.25 1/2 acres of land equivalent to more than 1 1/2 hectares of land having facilities for

growing one irrigated crop is not a small farmer as defined by the Act. Hence, he is not entitled to the benefits of the said Act.

6. Learned Government Advocate submits that in the instructions given to him, it is stated that the orders of the Tahsildar are passed under Tamil

Nadu Act 13 of 1980. I do not find any material on record to support the said instruction. On the other hand, the order of the Tahsildar expressly

refers to Section 3(f) of the Tamil Nadu Act 31 of 1976. It cannot, therefore, be one under Act 13 of 1980.

7. In the result, the writ petition is allowed. The orders of the first respondent and the second respondent dated 28.7.1982 and 27.4.1984 are

quashed. The mortgage dated 19.9.1973 executed by the third respondent's father in favour of the petitioner is declared to be subsisting. There

will be no order as to costs.