

(1949) 07 MAD CK 0023
In the Madras High Court

Ganapathi Subramania Ayyar and Another	APPELLANT
Vs	
Alloor Gopalaswami Naidu and Others	RESPONDENT

Date of Decision : 07-07-1949

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 19

Citation : (1949) 2 MLJ 394

Hon'ble Judges : Subba Rao, J

Bench : Division Bench

Judgement

Subba Rao, J.—This appeal raises an interesting point of law under the Madras. Agriculturists' Relief Act, namely, whether a debtor could

get a refund of the excess amounts paid by him to the creditor subsequent to 1st October, 1937. The facts. are fully and accurately stated in the

judgment of the lower Court and it is not necessary to restate them except to the extent necessary for appreciating the point of law raised in the

appeal.

2. Gopalaswami Naidu (the first defendant) executed a mortgage dated 1st. October, 1918, for a sum of Rs. 1,900 in favour of Muthia and

Subramania.. The plaintiffs 1 and 2 are the sons of Muthiah. Plaintiffs 3 to 6 are the sons. of Subramania. They instituted O.S. No. 45 of 1934 on

the file of the Court of the Subordinate Judge of Ramnad at Madura to enforce the said mortgage. along with another mortgage with which we are

now not concerned and obtained a preliminary decree on 25th January, 1936. The final decree was passed on 31st March, 1937. The decree-

holders brought some of the mortgaged properties to sale in execution of the said decree in E.P. No. 60 of 1940. Some of the items of the

mortgaged property were sold on 19th January, 1942, and a sum of Rs. 2565, was realised. The sale was confirmed on 20th February, 1942, and

part satisfaction of the decree was entered for a sum of Rs. 2,421-9 On 22nd January 1944, the third plaintiff received a further sum of Rs. 300.

On 27th December 1945, the defendants filed I.A. No. 44 of 1946 u/s 19 of Madras Act IV of 1938 for scaling down the decree debt. The

learned Subordinate Judge found that a sum of Rs. 1,782-4-1 was the amount due under the mortgage decree, but the defendants paid a sum of

Rs. 2,721-9-0 towards the decree. He therefore held that the defendants paid an excess amount of Rs. 939-4-11. The plaintiffs preferred the

above appeal against the said order of the learned Subordinate Judge.

3. The learned Counsel for the appellants contended that the judgment-debtors are not entitled to a refund of the excess amount paid by them and

relied upon. the provisions of Section 8 (4) of Madras Act IV of 1938 in support of their contention, whereas the learned Counsel for the

respondents argued that Sub-section. (4) of Section 8 is confined in its operation only to excess payments made prior to 1st October, 1937. To

appreciate the contention of the learned Counsel it is necessary to consider in detail the scope of the relevant provisions of the Act. The relevant

provisions of the Act read as follows:

7. Notwithstanding any law, custom, contract or decree of Court to the contrary, all debts, payable by an agriculturist at the commencement of this

Act, shall be scaled down in accordance-with the provisions of this Chapter.

No sum in excess of the amount as so scaled down shall be recoverable from him or from any land or interest in land belonging to him; nor shall his

property be liable to be attached and sold; or proceeded against in any manner in the execution of any decree against him in so far as such decree

is for an amount in excess of the sum as scaled down under this Chapter.

8. Debts incurred before the 1st October, 1932, shall be scaled down in the manner mentioned. hereunder, namely:

(1) All interest outstanding on the 1st October, 1937, in favour of any creditor of an agriculturist whether the same be payable under law, custom,

or contract or under a decree of Court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be-

discharged, and only the principal or such portion thereof as may be outstanding

shall be deemed to be the amount repayable by the agriculturist on that date.

(2) Where an agriculturist has paid to any creditor twice the amount of the principal; whether by way of principal or interest or both, such debt including the principal, shall be deemed to be wholly discharged.

(3) Where the sums repaid by way of principal or interest or both fall short of twice the amount of the principal, such amount only as would make up this shortage, or the principal amount or such portion of the principal amount as is outstanding, whichever is smaller, shall be repayable.

(4) Subject to the provisions of Sections 22 to 25, nothing contained in Sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, or to increase the liability of a debtor to pay any sum in excess of the amount which would have been payable by him if this Act had not been passed.

Section 7 gives the category of debts liable to be scaled down. Under that section only debts payable by an agriculturist at the commencement of

the Act could be scaled down under Chapter 11. It does not purport to lay down that for the purpose of scaling down, the extent of the liability

existing on that date can only be taken into consideration. Section 8 prescribes the manner of the scaling down of the debt. Sub-sections (2) and

(3) make it clear that the state of account obtaining between the parties at the time of the scaling down is the basis on which the debt should be

scaled down. Under Sub-section (2) if an agriculturist has paid to the creditor twice the amount of the principal the entire debt shall be deemed, to

be wholly discharged. For the purpose of this sub-section, it is obvious that amounts paid by the debtor towards principal or interest either before

1st October, 1937 or subsequently must be taken into consideration. Sub-section provides another method of scaling down. If the amount paid by

an agriculturist falls short of twice the amount of the principal, such amount only as would make up the shortage is liable to be recovered. For the

application of this sub-section also, the state of account on the date of scaling down, must necessarily be considered. Sub-section (4) saves excess

payments from the operation of Sub-sections (1), (2) and (3). Under this sub-section, the creditor is enabled to retain any excess payments paid to

him. The terms of this sub-section are clear and unambiguous and the language

is couched in general terms. The operation of this sub-section is not limited expressly or by necessary implication to excess-payments made before 1st October, 1937. This sub-section is subject to the provisions of Sections 22 to 25 of the Act. u/s 22 if moveable property has been sold after 1st October, 1937, the judgment-debtor is entitled to have the debt scaled down under the provisions of the Act and also to refund any sums paid by him on or after 1st October, 1937, in excess of the amount due by him. The refund of the excess amount provided by this section is therefore of the amounts paid after 1st October, 1937. Sections 23 and 24 provide for setting aside a sale of Immovable property on or after 1st October, 1937, and the excess amounts refundable by the sale being set aside may, therefore, also include amounts realised after 1st October, 1937. As Sections 22 to 25 are really exceptions to Sub-section (4) of Section 8 and when the said sections deal with refund of amounts paid after 1st October, 1937, it will be illogical to confine the scope of Sub-section (4) to excess payments made prior to 1st October, 1937. Further, to accept the argument of the learned Counsel for the respondents is to read into Sub-section (4) words which are not there. If the intention of the Legislature was that the excess payments made only prior to 1st October, 1937, are not liable to be refunded, it would have said so expressly in plain terms. The words as they stand are general and the context in which the sub-section appears does not in any way compel us to put a limited construction on the words used in the sub-section. Even on principle there cannot be a distinction between excess payments made prior to 1st October, 1937 and those made subsequently. If at all, there is a better reason why the excess payments made after 1st October, 1937, should not be refunded. When a debtor paid amounts prior to 1st October, 1937, he did so without any knowledge of the impending legislation, whereas when he paid the amounts after the Act came into force, he paid the excess amounts voluntarily and presumably with knowledge of the provisions of the Act. It is far more inequitable to compel refund of the amounts paid voluntarily than amounts paid in ignorance of the impending legislation. The learned Counsel for the respondents mainly relied upon the decision of Alapati Ankamma Vs. Pavuluri Basava Punneya, . That decision certainly supports the argument of the learned Counsel. The following passage in

the judgment clearly sums up the argument advanced by the learned Counsel for the respondents:

It is next contended that Section 8(4) of the Madras Agriculturists' Relief Act entitles the appellant to retain the sum recovered in excess of the

amount found payable to him under the Act. I am unable to agree. As the debts falling u/s 8 of the Act have to be scaled down as on the 1st

October, 1937, Sub-section (4) must be taken to refer to sums which were duly collected from the debtor before that date but which turn out to

be excessive as a result of applying the provisions of the Act, and the provisions cannot be understood as justifying the retention of sums recovered

in excess of what was legally due at the time of the recovery.

With great respect to the learned Judge, we cannot agree with his construction of Section 8 (4). Though u/s 8(1) of Madras Act IV of 1938, the

debt would have to be scaled down as on 1st October, 1937, the alternative methods of scaling down provided by Sub-sections (2) and (3) of

Section 8 clearly show that the state of account at the time of scaling down and the amounts paid before and after 1st October, 1937, should be

taken into consideration in scaling down the debt. The learned Counsel for the appellants referred us to a decision in *Lakshmi Venkayamma v.*

Venkatapathiraju (1941)1 M.L.J. That decision turns upon the construction of Section 9 of Madras Act IV of 1938 and the excess payment made

thereunder was one that is made on 15th March, 1938, i.e., before the Act came into force. Though that decision cannot be a direct authority on

the question argued before us, the principle behind the section is stated in clear terms by Wadsworth, J., at page 27 which equally applies to the

construction of Section 8 (4) of the Act. The learned Judge says.

It results in the conclusion that if the payments made towards interest are in excess of the amount of interest as scaled down, that excess amount

will be retained by the creditor and will not be adjusted in reduction of the principal; but there is nothing contrary to general principles in allowing a

creditor to retain that which has been willingly paid to him.

For the aforesaid reasons we hold that the appellants are entitled to retain the excess amount paid to them after 1st October, 1937.

4. The appeal is allowed to this extent but in the circumstances without costs.