

(1939) 09 MAD CK 0012
In the Madras High Court

Jami Venkatappadu and Others

APPELLANT

Vs

Kannepalli Ramamurthi and Others

RESPONDENT

Date of Decision : 20-09-1939

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 19, 20

Citation : AIR 1940 Mad 131 : (1939) 50 LW 851 : (1939) 2 MLJ 853

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—These are revision petitions from the orders of the Subordinate Judge of Berhampore and of the Subordinate Judge of

Chicacole on certain applications presented by the judgment-debtors under Sections 19 and 20 of the Madras Agriculturists Relief Act, the

judgment-debtors being the defendants in a mortgage suit instituted in 1929 in the Sub-Court at Berhampore in which the final decree was passed

on 9th March, 1933. The application for execution was made in August, 1934, (E.P. No. 79 of 1934) and it was during the pendency of this

application for execution that Orissa was constituted into a separate Province. The execution proceedings continued to be carried on in the

Berhampore Sub-Court and some of the mortgaged properties, all of which have been since the formation of the Orissa Province come within the

jurisdiction of the Sub-Court at Chicacole in this Presidency, were sold on 26th July, 1937, and they were purchased by the decree-holders

themselves after they had obtained permission to bid and to set off the sale price against the decree amount. The sale however was not confirmed

because on 24th August, 1937, that is, within a month after the sale, an application was made by the judgment-debtors under Order 21, Rule 90,

Civil Procedure Code, to set aside the sale and the enquiry into that petition was not completed till the 2nd April, 1938, on which date the

judgment-debtors presented petitions u/s 20 of the Madras Agriculturists' Relief Act praying for stay of execution. Petitions u/s 19 of the Act were

presented in the same Court, that is, the Berhampore Sub-Court on the 5th May, 1938. Similar petitions u/s 19 of the Act were also presented by

the judgment-debtors in the Chicacole Sub-Court on the 14th April, 1938, on the ground that the mortgaged properties were situate within the

jurisdiction of that Court. It would thus appear that the judgment-debtors were prosecuting the same remedy so far as the remedy given by Section

19 of the Act was concerned in two Courts at the same time. On the 4th July, 1938, an interim order was made by the Sub-Judge of Berhampore

on the petitions for stay u/s 20 of the Act. It is that order which is sought to be revised by the decree-holders in C.R.Ps. Nos, 224 to 228. On the

5th of November, 1938, the Berhampore Sub-Court made an order directing the petitioners, that is to say, the judgment-debtors, to elect between

the two Courts, namely, the Berhampore Sub-Court and the Chicacole Sub-Court and prosecute their remedy only in one of these two Courts.

As this was not done by the petitioners, the Berhampore Sub-Court dismissed the petitions u/s 19 for non-prosecution on 13th December, 1938.

It is from this order that C.R.Ps. Nos. 373 and 375 have been presented. It may be mentioned in this connection that the applications u/s 20 of the

Act were dismissed by the Berhampore Sub-Court on the 23rd January, 1939. C.R.Ps. Nos. 372 and 374 are petitions to revise this order.

2. There was an order made by the Chicacole Sub-Court on the petitions presented to it u/s 19 of the Act to the effect that it had jurisdiction to

deal with them. This order happens to have been made on the same date as the order of the Berhampore Sub-Court dismissing the similar petitions

u/s 19 and C.R.P. No. 588 is the petition to revise this order of the Chicacole Sub-Court dated 13th December, 1938, presented by the decree-

holders.

3. It was conceded by the learned Advocate-General who appeared for the petitioners in C.R.Ps. Nos. 372 to 375 of 1939 that so far as the

petitions u/s 20 of the Madras Agriculturists' Relief Act were concerned, it was the Berhampore Court alone which had jurisdiction as that was the

Court which passed the decree and was actually executing the decree at the time. On the other side, Mr. Venkatarama Sastriar also agrees that the

Berhampore Sub-Court had jurisdiction to deal with the petitions u/s 20 of the Act. So far, therefore, there is agreement, but as regards the

petitions u/s 19 of the Act, it is contended by the learned Advocate-General that it was the Chicaeole Court alone that had jurisdiction. His

alternative contention, however, is that if the Chicaeole Court had no jurisdiction then the Berhampore Sub-Court which must have jurisdiction was

not right in dismissing the petitions on the alleged ground of non-prosecution, in the circumstances which appear on the record. The question of

jurisdiction is really not one of difficulty. The order in Council which is relevant is the Government of India (Constitution of Orissa) Order of 1936.

Section 4(1) of that order is to the effect that the date on which the said provisions, that is to say, the provisions defining the Province of Orissa are

to come into operation shall be the 1st April, 1936. So far as the judicial proceedings are concerned, Section 20 gives power to the Governor-

General in Council to give such directions as he thinks proper as to the disposal of cases pending on or shortly before, the appointed date in any

Court acting for an area, any part of which is transferred by this order to Orissa and as to the Courts in which proceedings by way of appeal or

revision are to lie in cases decided by any such Courts before the appointed day. In pursuance of these powers the Governor-General in Council

published a Notification No. F. 210 of 1936, Judicial, dated 1st April, 1936. The notification consists of only two paragraphs which run as follows:

(1) Every proceeding pending on the appointed day before any Court, other than a High Court, in, or in respect of any area transferred by the said

order to Orissa shall be continued, as if the said order had not been made.

(2) Any appeal or application for revision in respect of any proceeding so pending or of any decision made before the appointed day in any such

Court in or in respect of any such area shall lie in the Court which has appellate or revisional jurisdiction to try such proceeding if the proceeding

were instituted after the appointed day.

Provided that, where the proceeding relates to any property situate partly within and partly without any area transferred by the said order to

Orissa, any appeal or application for revision shall lie as if the said order had not

been made.

4. It is clear from the first paragraph, as the execution petition was pending on the 1st April, 1936, in the Berhampore Sub-Court, the Berhampore

Sub-Court was perfectly competent to go on with it as if the Order in Council constituting the Orissa Province had not been made. In other words,

it had complete jurisdiction and so far as the jurisdiction to deal with the execution application then pending is concerned; the position was as if the

old state of things had continued without any change and the Berhampore Sub-Court continued to function as a Court in this Presidency, and

subject to the jurisdiction of this High Court. We have no doubt that all the petitions, that is, those u/s 19 as well as u/s 20 of the Madras

Agriculturists Relief Act must be deemed to be petitions which raise questions relating to execution, discharge or satisfaction of the decree and

therefore come within the matters covered by Section 47, Civil Procedure Code. They were therefore rightly presented in the Berhampore Sub-

Court. The presentation of petitions u/s 19 of the Act for the same remedy in the Chicacole Sub-Court was obviously a precaution taken lest there

should be some doubt expressed by the Berhampore Sub-Court about its own" jurisdiction to deal with the petition under the Madras

Agriculturists' Relief Act passed by the Madras Legislature after that Court had ceased to be included in the Madras Province to which alone that

Act applied. But this precaution taken by the judgment-debtors cannot justify the Berhampore Sub-Court in dismissing the application made to it

simply because the petitioners would not make the election which they were asked to make by the Court and would not withdraw the petitions

presented by them in the Chicacole Sub-Court. This is not a judicial way of disposing of matters of this kind raising questions of considerable

importance, the decision of which will entail serious consequences. It is enough to state in this connection that if ,;the judgment-debtors" case is

established, the decree debt would be scaled down by over Rs. 25,000. The order of the 13th December, 1938, made by the Sub-Court of

Berhampore is itself very clear that the only reason for dismissing the petitions was not any non-prosecution of the petitions but what the Court

appears to have regarded as contumacy on the part of the petitioners. The order runs as follows:

Adjournment cost paid. The applicants have so far taken no steps to comply with my previous orders, though the direction was specified and

clear, even adjournment was allowed last time on terms of cost. On the contrary, Mr. Y.S. kamatnurthy, Advocate for the decree-holders,

represents that the applicants are so far maintaining before the Subordinate Judge of Chicacole that it is that Court which is only seized with

jurisdiction over the matter in question. As the applicants are playing this double game though they were warned more than once that they are

expected to be more candid in their conduct towards the Court, I decline to grant any further adjournment on this ground and dismiss this

application and the other analogous applications for non-prosecution.

5. The reasons given for refusing the adjournment are the only reasons for the dismissal of the applications because there is nothing to show that

there was any non-prosecution as such. It is clear therefore that the Berhampore Court had jurisdiction to deal with the applications made to it

under Sections 20 and 19 of the Act and it was bound to deal with them on their merits and that its order dismissing the application on the alleged

ground of non-prosecution is wrong and cannot be sustained.

6. Before however remanding the petitions to the Subordinate judge of Berhampore for fresh disposal on the merits, we have to deal with the

contention put forward by Mr. Venkatarama Sastriar to the effect that the Berhampore Court would not be bound to apply or enforce the

provisions of the Madras Agriculturists' Relief Act. This contention has to be met because that contention were well founded, there would be no

reason to remand the petitions to the Berhampore Sub-Court for fresh disposal. We are of opinion that this contention has really no foundation,

because, as was observed already, the very provision in the notification of the Governor-General in Council which provides that pending cases

should continue to be dealt with by the Courts in which they were pending also shows that they should be dealt with as if the order in Council

constituting the Orissa Province had not been made. In other words, the proceedings have to be continued as if the Berhampore. Sub-Court had

not ceased to be a Court belonging to and included in this Presidency and as these petitions and applications are proceedings initiated in

connection with the pending execution application, it is obvious that the

Berhampore Sub-Court and that Court alone has to deal with these applications and deal with them as if that Court is still a Court included in the Madras Province and as such bound by any Legislative enactment that may be in force in the Madras Province.

7. We are therefore of opinion that the Madras Agriculturists' Relief Act has to be applied and its provisions enforced by the Berhampore Sub-

Court in dealing with these petitions so long as the execution application continues to be pending in that Court, or, to use the words of the

Notification, is "continued in that Court." It follows from this that Revision Petitions Nos. 372 to 375 have to be allowed and the orders of the

Berhampore Sub-Court dated 13th December, 1938, and 23rd January, 1939, set aside and the petitions concerned remanded to the

Berhampore Sub-Court for disposal according to law in the light of the observations contained in this judgment. There will, however, in the

circumstances of the case, be no order as to costs in this Court in these Revision Petitions.

8. As regards the other Revision Petitions presented by the decree-holders from the order of the Berhampore Sub-Court dated 4th July, 1938, the

order sought to be revised is clearly on the face of it an interim order and it is equally clear that that order was discharged and became of no effect

after the petitions in which that interim order was passed had been ultimately dismissed in January, 1939, by the Berhampore Sub-Court,, It is not

disputed that this is the position in law. But Mr. Venkatarama Sastriar thinks that his clients might be prejudiced if certain observations made in the

interim order of the 4th July, 1938, remain as they are because they might influence the final disposal on the merits of the petitions under Sections

19 and 20. It is enough, in our opinion, to indicate our view that the order dated 4th July, 1938, is no longer in force after the dismissal of the

petitions themselves on the 23rd January, 1939, and that nothing contained in that order should be deemed to be of any force or effect. With this

indication of our opinion, these petitions are dismissed but without costs.

9. There remains only one other petition, namely, C. R. P. Mo. 588 filed by the decree-holder, to revise the order of the Chicacole Sub-Court

dated 13th December, 1938, on the petitions presented to it u/s 19 by the judgment-debtors. That order merely states that the Chicacole Sub-

Court had jurisdiction to deal with these petitions. From what we have said it is clear that the Chicacole Court had no jurisdiction because we have found it is the Berhampore Court alone which had jurisdiction. It follows from this that this petition must be allowed though without costs and the order of the Chicacole Sub Court dated 13th December, 1938, set aside.