
(1950) 04 MAD CK 0005
In the Madras High Court
Case No : Appeal No. 672 of 1946

Kamala Bai Ammal

APPELLANT

Vs

Theethachari alias Appu Rao and Others

RESPONDENT

Date of Decision : 11-04-1950

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 4

Citation : AIR 1951 Mad 345 : (1950) 63 LW 1027 : (1942) 55 LW 1027 : (1950) 2 MLJ 286

Hon'ble Judges : Subba Rao, J;Panchpakesa Ayyar, J

Bench : Division Bench

Advocate : T.M. Krishnaswami Iyer and T.K. Subramanic Pillai, for the Appellant; Seshadri and K.S. Ramamurthy, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—The question in this appeal turns upon the construction of Section 4, Clause (h) of Madras Act IV [4] of 1938. One Ranga

Rao executed a deed of mortgage dated 8-12-1930, for a sum of Rs. 2750 in favour of his daughter Seethammal, In execution of a money decree

obtained by a creditor against Ranga Rao, the mortgaged properties were purchased by one Krishna Rao, subject to the suit mortgage. Krishna

Rao in his turn sold the equity of redemption in the properties to the sister-in-law, defendant 1. Defendant 2, the husband of defendant 1, is a

subsequent mortgagee. Defendants 3 and 4 are the lessees of the properties. Defendant 5 is a sub-mortgagee from Seethammal. Seethanamal died

on 24-8-1945. The plaintiff, as her heir, filed O. S. No. 195 on the file of the Court of the Subordinate Judge of Coimbatore for recovery of a sum

of RS. 7389-2-8 the amount due under the mortgage bond. The defendants

contended that the suit mortgage was not supported by consideration, that it was bad for non-joinder of parties, that the suit document was taken by the plaintiff benami in the name of his wife and that defendant 1 was entitled to a scaling down of the decree. The learned Sub-ordinate Judge held against the defendants on all the points. He held that as the mortgagee was a woman on 1-10-1937, the debt due to her was exempt from the operation of the Act. In the result he gave a preliminary decree for the recovery of the suit amount. Defendant 1 has preferred the above appeal.

2. The learned counsel for the appellant argued that Section 4(h) , Madras Agriculturists Relief Act, does not apply to the suit debt as the plaintiff is not a woman at the time the debt is sought to be enforced, though the creditor was a woman on 1-10-1937. The relevant provisions may be extracted:

Section 3(iii)--"debt" means any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree

or order of a civil or revenue Court or otherwise, but does not include rent as defined in Clause (iv), or "kanartham" as defined in Section 3(1)(i),

Malabar Tenancy Act, 1929;

Section 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.

Section 13 provides for the scaling down of interest due on any debt incurred by an agriculturist after the commencement of the Act. Section 4

runs thus:

Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads :

(h) any debt or debts due to a woman on 1-10-1937, provided that the value of the property owned by her on that date, including the principal

amount of debtor debts so due, did not exceed six thousand rupees.

A combined reading of the aforesaid provisions disclose the intention of the Legislature. Under the Act all debts payable by an agriculturist are

liable to be scaled down. Section 4 excludes certain category of debts from the operation of the Act. The debts so excluded are defined and put

under various heads. It is very difficult to ascertain any consistent principle for

the classification adopted by the Legislature. The only logical basis is that the section defines the category of debts excluded from the operation of the Act. The debts excluded are narrated and the section does not purport to deal with the qualification of a creditor when he seeks to enforce his debt. The wording of Section 4(h) is clear and unambiguous and does not admit of any doubt. A debt due to a woman on 1-10-1937, who on that date did not own property of the value mentioned therein, is excluded. The point of time when the debt must satisfy the conditions laid down is 1-10-1937. It lays down only two conditions, (1) that on 1-10-1937 it should be a debt due to a woman, (2) on that date she did not own property of the value mentioned in that clause. If these conditions are complied with, the debt is excluded from the operation of the Act.

3. Mr. T.M. Krishnaswami Aiyar, the learned counsel for the appellant argued that the Legislature intended to protect only woman creditors and therefore the clause must be so construed as to carry out the intention of the Legislature. He suggests that the debt to be exempted must comply with two conditions (1) it must be a debt due to a woman at the time when it is sought to be recovered, (2) that it should be a debt on 1-10-1937 complying with the other conditions of that clause. He forcefully narrated the anomalies that would follow if this construction was not adopted; for, he contended that the object of the Legislature would be frustrated if the creditor, though a man would be entitled to the exemption, whereas the intention was only to protect the interests of women. The construction suggested by him would involve the adding of some words which are not found in the clause. What is exempted is a debt, and the debt exempted is qualified by the provisions of the clause. It does not say that the creditor should be a woman at the time of enforcing the debt. Arguments based upon anomalies and unjust preference to a particular class of creditors do not appeal to us. An expropriatory Act of this type necessarily must contain arbitrary provisions, and it is not our province to question the policy of the Legislature, but to give effect to the clear words used. Indeed, there would be obvious anomalies even if he accepted the argument of the learned counsel. A creditor may be a woman on 1-10-1937. She may assign the debt to a man who in his turn may assign it to a woman.

Assignments may be made even pending a suit. We do not think that the

exemption should be made to depend upon such changing circumstances.

4. We shall now proceed to consider the decisions cited. The application of Section 4(h) of the Act was first considered in *Ramaswami v.*

Alagayammal, I. L. R. (1940) Mad. 688 : A. I. R. 1940 Mad 421. The creditor in that case, being a woman, claimed the benefit of the exemption

u/s 4(h) of the Act. Besides the decree debt sought to be scaled down, she was entitled to a half share in a mortgage debt from another person,

but had no other property, and the principal amount of those debts did not exceed Rs. 3000. It was argued for the debtor that the creditor was not

entitled to the exemption claimed as she owned, on the material date, other property, namely, half a share in the mortgage debt referred to. The

learned Judges held that debts due from an agriculturist to a woman on 1-10-1937 were not to be scaled down under the Act if on that date the

principal amount of such debts did not exceed Rs. 3000 and the woman did not own any property other than such debts apart from her personal

belongings. In the course of the judgment the following observations were made:

There is nothing to indicate that the words "any debt or debts in Clause (h) refer to the debt or debts in respect of which the application for scaling

down has been made. On the other hand, the opening words of the section, "Nothing in this Act shall affect debts and liabilities of an agriculturist

falling under the following heads" show that the exemption relates to certain classes of debts and has no particular reference to the debt sought to

be scaled down. The exemption u/s 4(h), as we understand the provision, covers a particular category of debts, limited in regard to the nature and

extent, while insisting, as a condition of its application, that the creditor woman should not have owned on the date specified any other property,

that is to say, property not falling under that category apart from property excluded by the explanation.

Though this is not a direct decision, the construction put upon the words by the learned Judges will certainly help us to decide the present case. The

categories of debts mentioned in Section 4 are exempted from the operation of the Act. In *Muthal Achi v. Doraiswami Pillai* A. I. R. 1942 Mad.

662: 203 I. C. 192 the original creditor was a male, but the debt was assigned to a woman and on 1-10-1937 the creditor happened to be a

woman. The learned Judge says that :

Having taken the assignment the plaintiff became the owner of the debt and when she claimed the benefit of the exemption provided by the Act for

women creditors, it is no answer to say that the original payee under the suit note was a male.

The learned counsel relied upon the words ""provided by the Act for women creditors"" and argued that the creditor who seeks to get an exemption

must be a woman. The question argued before us could not have been raised in that suit and the general observations of the learned Judge could

not be relied upon in support of an argument that was not raised before him. Further, the learned Judges did not say that the creditor who is

enforcing the debt must be a woman. The words used could as well be understood to refer to the son of the creditor on 1-10-1937.

5. Kaniakaparameswaramma v. Kotayya A. I. R. 1943 Mad 686 : 210 I. C. 273 is also a decision on the interpretation of this section. The

plaintiff's suit was on a promissory note dated 24-11-1937. The said promissory note could be traced to the earliest promissory note dated 27-

12-1931 which was the starting point of liability. Exemption was claimed by the creditor u/s 4(h) of the Act. The learned Subordinate Judge held

that as the latest promissory note was executed on 24-11 1937 there was no debt due to a woman on 1 10-1937. The learned Judges negatived

the contention and held that the clause must be read as exempting from the operation of the Act all that class of categories of agriculturists which

are included in Clause (h) regardless of whether after 1-10-1937 a fresh document was or was not executed by the same debtor in respect of the

debt. The learned Judges observed :

We hold in connection with Section 10(2)(ii) of Act IV [4] of 1938 that the intention of the Legislature was to specify the classes of liabilities in

respect of which the scaling down provisions were not to operate and that the exclusion of liabilities of these categories is not to depend on the

actual subsistence of the charge but on the question whether in the beginning the liability was one in respect of which a charge was provided

Clause (h) of Section 4 does not say expressly what is to happen if the debt due to a woman on 1-10-1937 is transferred or renewed or reduced

by a payment in the Interval between 1-10-1937 and the date when the matter comes before the Court. While conceding that a different view

might be taken, we are of opinion that this clause must be read as exempting from the operation of the Act all that class of liabilities of an

agriculturist which are included in Clause (h) regardless of whether after 1-10-1937 a fresh document is or is not executed by the same debtor in

respect of that debt.

This principle applies with equal force to the facts of the present case. The only question to be considered is whether this particular debt has been

excluded from the operation of the Act. The fact that subsequently the woman creditor died and is succeeded by a male creditor does not affect

the question. Clause (a) of Section 4 fell to be considered in *Tkirugnanavalli Ammal v. Venugopala Pillai* A. I. R. 1945 Mad. 125 : 1945 M. W. N.

172. The plaintiff, after having paid the revenue to the Government on behalf of the defendant, filed a suit for recovery of the same from the

defendant. The defendant, being an agriculturist, claimed relief under the Act. The plaintiff claimed that the debt due to him was exempted from the

operation of the Act by Section 4(a) as the liability in the beginning was with regard to revenue payable to the Provincial Government within the

meaning of Section 4(h) of the Act. The learned Judges accepted the contention and said thus at p. 126 :

Undoubtedly the liability of the judgment-debtor to the Provincial Government was in respect of revenue. In the beginning the liability was one

falling under the category provided in Section 4 Clause (a) In the present case, the liability of the petitioner was in the beginning to pay revenue

due to the Provincial Government." If in the case of Section 4(a), the liability at its origin was the test of exemption, we do not see any reason why

in the case of Section 4(h) a different interpretation should be given. The learned counsel relied upon the following observations of the learned

Judges in the above case when they distinguished a case falling u/s 4(h) from the case they were deciding :

Under Section 4(h) the criterion is that of a creditor. Is a woman holding property not exceeding Rs. 3,000? In such a case where the creditor's

status is the test, different considerations may arise.

These observations were made when it was urged before them that u/s 4(h) this Court had held that if a creditor who would be protected under

that clause transferred that right to a person who did not come within the clause

he was not protected by the clause. So far as we are aware, there is no decision of this Court where it is held that if the debt is exempted u/s 4(h) on 1-10-1937, it will be liable to be scaled down if subsequent to the Act, the woman transferred the right to a man. Further the observations were made only to explain away a possible contention based upon an analogous provision, and the observations could not be treated as an expression of the learned Judge's final opinion on Section 4(b). The construction put upon Section 10(2)(ii) of the Act by a Bench of this Court in *Varadarajaperumal Pillai v. Palanimuthu Goundan*, I. L. R. (1941) Mad. 132 :A.I.R. 1941 Mad. 118, may usefully be referred to. The learned Judges say :

This provision may be read in two ways. It may be read as safeguarding any liability for which a charge u/s 55(iv)(b), T. P. Act subsists ; or it may be read as protecting any liability of the category of liabilities in respect of which a charge is provided u/s 55(iv)(b), T. P. Act. We are of opinion that the latter interpretation is the correct interpretation and that the intention of the legislature was to specify those classes of liabilities in respect of which the scaling down provisions of the Act were not to operate and that the exclusion of liabilities of these categories was not to depend on the actual subsistence of the charge but on the question whether in the beginning the liability was one belonging to that category in respect of which the T.

P. Act provided a charge.

In our view, the same principle should be applied even in interpreting Section 4 of the Act. Section 4 of the Act defines the category of debts excluded from the operation of the Act, and the categories so excluded are defined with precision in the various sections of the Act. We, therefore, hold that, u/s 4(h), to get an exemption, it would be enough if the debt was due to a woman on 1-10-1937 provided she did not possess property of the value mentioned in that clause. If once that condition is satisfied at its origin, we are not concerned with the character or the status of the creditor at the time the debt is sought to be enforced.

6. We, therefore, agree with the lower Court that defendant 1 is not entitled to have the decree scaled down under Madras Act, IV (4) of 1938.

In the result, the appeal fails and is dismissed with costs.