

(1949) 04 MAD CK 0018

In the Madras High Court

Case No : Civil Revision Petition No. 1159 of 1946

Karra Lakshminarasimhayya

APPELLANT

Vs

Sri Mahant Prayag Dossjee Varu (since deceased) and
Another

RESPONDENT

Date of Decision : 04-04-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60

Citation : AIR 1950 Mad 114

Hon'ble Judges : Mack, J

Bench : Single Bench

Advocate : C.A. Vaidhyalingam and T. Rangaswami Iyengar, for the Appellant;
V.M. Ramaswami Mudaliar and N. Gopala Menon, for the Respondent

Final Decision : Allowed

Judgement

Mack, J.—The petitioner is a teacher in the T. T. D. High School, Tirupathi, drawing a salary of Rs. 52. On a decree obtained against him in

a suit filed prior to 1st June 1937, Rupees 7-8-0 of his salary was attached on a consent order passed by the District Court of Chittoor in C. M.

A. No. 35 of 1937 on 11th January 1938. In an execution petition filed in 1944 by the decree-holder the District Munsif held that the salary of the

judgment-debtor was attachable despite the Amending Act V [6] of 1943 which repealed Act IX [9] of 1937. Both Acts made very important

exemptions from attachment in the case of all persons, whether public officers or not, drawing a salary of less than Rs. 100. Section 3 of the Act

IX [9] of 1937 made the amendments inapplicable to proceedings arising out of any suit instituted before 1st June 1937. This Act was one of those

repealed by the Repealing and Amending Act, XXV [25] of 1942 and a further

Act, Act V [5] of 1943, further amending Section 60, Civil P. C, was subsequently enacted making certain modifications and amendments to this section, as already amended by Act, IX [9] of 1937, which amendments had been incorporated into Section 60. Section 3 of Act IX [9] of 1937 is not repeated in Act V [5] of 1943. The point arising for determination is whether under the law as it stands, the salaries of private persons in suits filed against them prior to 1st June 1987 are exempt from attachment upto Rs. 100 or whether such decrees also are to be regulated by the same procedure as decrees obtained subsequent to 1st June 1937. The District Munsif took the view that Act V [5] of 1943 made no alteration in the law as laid down by Act IX [9] of 1937. He held that his salary was still liable to be attached. The learned District Judge confirmed this finding following the Bench decision of the Bombay High Court in *Manilal Bhaichand Vs. Mohanlal Maganlal*, .

2. The point involved is one of some importance affecting as it does a class of judgment-debtors in needy circumstances. The case which the learned Judges of the Bombay High Court were called upon to consider was of a clerk in the employment of a mill against whom a decree was passed in a suit filed on 1st June 1937. It was held that the whole of his salary including his dearness allowance was liable to attachment u/s 60, Civil P. C, as it stood prior to the Amending Act IX [9] of 1937 by virtue of Section 8 of that Act.

2a. One reason which led to that decision was that the amendment in Section 60, Civil P. C., effected by Act, is [9] of 1937 having been incorporated into the Code itself, there was no necessity of burdening the Statute book with Act IX [9] of 1937 and it was therefore repealed by the Repealing and Amending Act XXV [25] of 1942. The repeal therefore was held not to affect the rights and liabilities created by that Act which preserved for decree-holders in suits filed before 1st June 1937 a right to attach all salaries in accordance with Section 60 as it stood on the date of the amendment. Their Lordships observed in this connection :
We do not think that Act V [5] of 1943 was intended to take away pre-existing rights preserved by Section 3 of Act IX [9] of 1937 since the amendments made by it were only verbal.

Another ground on which this decision was based was that Section 4 of the

Repealing and Amending Act, of 1942 laid down that it shall not affect any act or regulation in which such enactments had been applied, incorporated or referred to, nor shall it affect any right, title, obligation or liability already secured or incurred or any remedy or proceeding in respect thereof. With great respect to the Bench of the Bombay High Court, I am constrained to disagree from that view and unable to follow it. Section 3 of Act IX [9] of 1937 with the heading "Retrospective Effect," reads as follows:

The amendments made by Section 2 shall not have effect in respect of any proceedings arising out of any suit instituted before 1st June 1937.

Section 2 made very important amendments doing away with the distinctions between salaries of public officers, servants of railway companies or

local authorities and private employees placing them all on the same basis so far as attachment was concerned exempting the first hundred rupees

and one half the remainder of such salary. We are in the domain of procedural law which is obvious from the mere fact that we are concerned with

amendments to the Civil Procedure Code. The general principle as stated by Maxwell in his Interpretation of Statutes, Edn. 9 at p. 233 is that

alterations in procedure are retrospective, unless there is some good reason against it. This is well settled law based on *James Gardner v. Edward*

A. Lucas, (1878) 3 A.C. 582 and *Kim-bray v. Draper*, (1868) 3 Q.B. 160: 37 L.J. Q.B. 80. There can therefore be no doubt that had it not been

for Section 3 of Act IX [9] of 1937 which specifically withdrew retrospective effect to the amended procedural law to suits filed prior to 1st June

1937 decrees on such suits would have been governed by the new procedure.

3. Now Act IX [9] of 1937 has been repealed by Act V [5] of 1943 which, no doubt as observed in the Bombay decision so far as it related to

amendments of Section 60 already effected by Act IX [9] of 1937 and incorporated in the section, made some other changes on this basis. Where

however, I am with respect unable to agree is that Section 3 of Act IX [9] of 1937 can be brought within the category of these other amendments

already incorporated in Section 60, Civil P. C., under cover of Section 4 of the Repealing and Amending Act XXV [25] of 1942. The exact

wording of the first part of Section 4 which is relevant for our purposes, is this :
""The repeal by this enactment shall not affect any act or regulation

in which such enactment has been applied, incorporated or referred to." There is no authority under Act, IX [9] of 1937 for the incorporation of

Section 3 into Section 60, Civil P. C., and the taking away of the retrospective operation of these amendments which does not affect the

procedural law as a whole u/s 60, Civil P. C., as finally amended, can only derive its sanction from Section 3 of Act, IX [9] of 1937. I am

therefore led to the view that the repeal of Act, IX [9] of 1937 by Act, XXV [25] of 1942 has the result of repealing Section 3 of that Act which is

not preserved by anything u/s 4 of Act XXV [25] of 1942. With respect therefore I am un-able to agree with the view taken in the Bombay

decision that Act, IX [9] of 1937 having been incorporated in the Code itself, there was no necessity to burden the statute book with it and that it

was therefore repealed without affecting the existing rights and liabilities created by that Amending Act. Had the Legislature intended to restrict the

retrospective operation imposed by Section 3 of Act IX [9] of 1937, I think this should have been specifically retained in the Amending Act V [5]

of 1943 in view of the earlier Act having been repealed. At the time Act, IX [9] of 1937 was enacted the intention of the Legislature when dealing

with the rights and procedure together, may well have been that old rights would have to be determined by the old procedure and that only new

rights under the substituted section were to be dealt with by the new procedure. The anomalies resulting from Section 3 of Act IX [9] of 1937

making invidious distinctions between procedure applicable to judgment-debtors in general, in view of the amending Act itself which sought to do

away with such invidious distinctions between different classes of low paid employees, may well have been a deter-mining factor in the repeal of

this Act, not merely as unnecessary being already incorporated in Section 60 but also with the object of doing away with Section 8 of the

Repealing Act IX [9] of 1937, and bringing in all judgment-debtors subsequent to Act v [5] of 1943 on the same footing so far as procedure in

execution against them is concerned, irrespective of whether decrees were obtained against them in suits prior to or subsequent to 1st June 1937.

Maxwell has observed at p. 234 of his Interpretation of Statutes that even a new procedure would be presumably inapplicable where its

application would prejudice rights established under the old or would involve a breach of faith between the parties. It is extremely difficult to hold

that a procedural right to attach the salary of a class of low paid employees in toto under the old law is an established right which should not be

interfered with under this principle, or, that its withdrawal would involve a breach of faith between the parties. It is open to the decree-holder in a

suit prior to 1937 to continue to execute his decree on exactly the same conditions as decree holders in suits instituted subsequent to 1st June

1937. I prefer to take the view that it was consciousness of the inequity of Section 3 of Act IX [9] of 1937 discriminating as it did between class of

judgment-debtors which led to this Act IX [9] of 1937, in particular Section 3 being repealed.

4. Coming to the present case, it clearly makes no difference that the attachment of Rs. 7-8-0 of the petitioner's salary was effected by a consent

order in an appeal on the execution side in which he raised some other contentions. No part of the petitioner's salary is now attachable nor can any

consent order passed on the basis of the old procedural law legalise this attachment subsequent to Act, V [6] of 1943 and render it operative. In

the result, in the view I have taken, the petition is allowed but in the circumstances I direct the parties to bear their own costs.