

(1942) 02 MAD CK 0035
In the Madras High Court

K.M.N.S.P. Nachiappa Chettiar (dead) and Others	APPELLANT
Vs	
A.K.A. Ramachandra Reddiar and Others	RESPONDENT

Date of Decision : 03-02-1942

Acts Referred:

Citation : AIR 1942 Mad 527 : (1942) 55 LW 283 : (1942) 1 MLJ 510

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.

[After dealing with Appeals Nos. 23 and 24 of 1988, His Lordship proceeded :]

1. It remains only to deal with Appeal No. 295 of 1939 and C.R.P. No. 1857 of 1939, which, as stated already, have been preferred by defendants 5 to 8. These defendants are admittedly not agriculturists within the meaning of the Madras Act IV of 1938, and cannot therefore, put forward any claim under that Act to have the mortgage debt scaled down. But these defendants contend that if the debt is scaled down at the instance of the mortgagor who is an agriculturist and claims the benefits of the Act, the properties purchased by these defendants subject to the suit mortgage could be proceeded against only for the scaled down amount and no more, under the general law relating to mortgages. This contention is supported by the decision reported in Arunachalam v. Seetharam (1941) 1 M.L.J. 561 : ILR (1941) Mad. 930 to which one of us was a party. The same principle was also applied in Marina Ammayi Vs. Mirza Bakhar Beg Saheb and Others, and Pachigola Satyanarayanamurthi (died) and Others Vs. Karatam Sathiraju and Others, Appeal Nos. 118 and 119 of 1939, which arose out of suits for redemption. Our attention was drawn to certain observations in C.S. Ramier Vs. B.N. Srinivasiah, as being in conflict with the view expressed in the decisions referred to above. In that case which was the converse of the present, the mortgagor was a non-agriculturist and a puisne mortgagee who was an agriculturist claimed the benefit of the Act. It was argued on behalf of the mortgagee that, as the scaling down of the decree at the instance of the puisne

mortgagee (who according to earlier decisions was a debtor within the meaning of the Act) would result in benefiting the non-agriculturist mortgagor contrary to the intendment of the Act, no relief should be given to the applicant although he was an agriculturist. This contention was negated and the observations in the judgment even if a little too widely expressed must be understood with reference to the particular situation there dealt with and not as laying down any general proposition applicable to different facts.

2. In the result Appeals Nos. 23 and 24 of 1938, are dismissed with costs and Appeal No. 295 of 1939 is allowed with costs here and below. C.R.P. No. 1857 of 1939, which was filed only in the alternative is dismissed without costs.

3. The advocates' fee in A.S. No. 24, will be calculated on the value of the decree as scaled down in the lower Court.