(1999) 03 MAD CK 0038

In the Madras High Court

Case No : L.P.A. No. 139 of 1987

Lakshmi Aachi and another — APPELLANT

Vs

Parvathi Achi (died) Alagappa Chettiar (a) Alagn Chettiar — RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 19

Citation : (1999) 2 CTC 40 : (1999) 2 LW 291 : (1999) 2 MLJ 433

Hon'ble Judges : N.K. Jain, Acting C.J.;S.S. Subramani, J;Jagadeesan, J

Bench : Full Bench

Advocate : Mr. S.M. Loganathan, for the Appellant; Mr. R. Alaga, Senio Counsel for Mr. Y.K. Rajagopal, for the Respondent

Judgement

Judgement pronounced by N.K. Jain, A.C J.

1. This matter has been referred to the Full Bench by a Division Bench of this Court in L.P.A.No. 139 of 1987, and had come before us.

2. The brief facts which are necessary for the disposal of the reference are:

It is alleged that the plaintiff/respondent filed a suit alleging that the first appellant/defendant borrowed a sum of Rs. 5,000 promising to re-pay the

same with interest @ 15% per annum and executed the suit mortgage deed, on 30.5.1960, in respect of the plaint schedule property on behalf of

herself and as guardian of her minor son, the second appellant/defendant. It is submitted that some amount, accrued interest, has been re-paid. But,

despite repeated demand, the balance has not been settled. Hence, the plaintiff/ respondent filed suit for recovery.

3. The suit was resisted by defendants one and two. First defendant admitted the execution of the mortgage deed and contended that she is entitled

to the benefits of the Tamil Nadu Act 4 of 1938 as amended by Act 31 of 1976 and Act 40 of 1978. Whereas the second defendant disputed the

truth and validity of the mortgage deed, and submitted that he is entitled to half share in the property mortgaged and that the mortgage deed is not

binding on him and as such he is not liable to pay any amount to the plaintiff.

4. The Trial Court, on the pleadings, framed nine issues and it was held that though the mortgage deed was true, is not binding on the second

defendant and that the first defendant is entitled to the benefit of Tamil Nadu Act 4 of 1938 as amended by Act 31 of 1976 and Act 40 of 1978.

Holding that the plaintiff was not entitled to recovery any amount, the suit was dismissed.

5. The plaintiff preferred an appeal. On appeal it was held that the first defendant was not entitled to the benefits of Act 4 of 1938 as amended by

Act 8 of 1973 as she was not an agriculturist on the date of borrowing of the amount viz. 30.5.1960 and the appeal was allowed in part.

6. Against that judgment, L.P.A. is filed and the questions that arises for consideration in the L.P.A. are:

1. Whether it is enough if the debtor is an agriculturists as on 1.3.1972 to claim the benefits under Act IV of 1938 as amended by Act VIII of

1973.

2. Whether the assessment in the name of the first defendant can be apportioned because the finding is that she is entitled to a half share only in the

hypotheca.

7. The Division Bench of this Court while considering the L.P.A. heard the respective arguments and the case law and observed that the case in

O.S.A. Nos. 60 and 127 of 1980 has not been correctly decided and in view of the conflicting decisions on the question whether a debtor who

claims the benefit by virtue of the amended Act VIII of 1973 should be an agriculturists on the date of incurring debt in addition to the fact that he

should be an agriculturist on 1st March, 1972 when the Amended Act came into force and on the date of filing of the petition or suit for recovery

or application for amendment u/s 19 of the the Act, and referred the matter to the Full Bench for consideration.

Whether a debtor who claims the benefit by virtue of the provision of Section 8 of Act 4 of 1938 as amended by Act 8 of 1973 should be an

agriculturist on the date of incurring of the debt, in addition to the fact that he should be an agriculturists on 1.3.1972 when the Amended Act came

into force and on the date of suit or it is enough if he is a debtor on 1.3.1972 and on the date of suit?

8. The Tamil Nadu Agriculturists Relief Act, 4 of 1938 came into force in 1938 to provide for the relief of indebted agriculturists in the State of

Tamil Nadu. It is relevant to consider the definition of the term ''agriculturists'' in the Act.

''agriculturists'' means a person who --

(a) has a saleable interest in any agricultural or horticultural land in the ''State of Tamil Nadu which is assessed by the Stale Government to land

revenue which shall be deemed to include peskash and quit-rent, or which is held free of tax under a grant made, confirmed ore recognized by

Government;

''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) of ''Karnartham'' as defined in Section 3 of the Malbar

Tenancy Act, 1929 Tamil Nadu Act 14 of 1930.

An amendment to the Act 4 of 1938 came into effect in 1973 Tamil Nadu Act 8 of the 1973. According to this the date 1.3.1972 has been

substituted as against the date 1.10.1972.

9. We have heard the learned counsel appearing on either side and perused the materials available on record and the case laws, cited by each of

them.

10. A cursory perusal of the provisions of Act 4 of 1938 and its object shows that the Act is to provide for the relief on indebted agriculturists in

the State of Tamil Nadu. Therefore, those who want to claim the benefits of the Act, should be an agriculturists on the date of incurring debt. By

the amendment of Act 8 of 1973, only the date had been substituted as 1.3.1972. It is also seen that by the provision of the Act, the rate of

interest had been scaled down.

11. The purposes of the Act is very clear. There is no ambiguity. The section of the Act has to be read as a whole and every word must be given

its full and accurate effect, and the Court will not add or subtract a word from the

Statute while interpreting the same. Nor it is permissible for this

Court to fill up the gap by searching the word used. However, the intention has to be gathered considering the plain meaning, scheme and the

object of the Act, with a view to promote the intention of the Legislature and to give its full effect.

12. We have also perused the decision of the Full Bench of this Court in Papathi Ammal v. Nallu Pillai, 1963 (II) MLJ 594 wherein the borrower

was an agriculturist at the time when the debt was incurred and he ceased to be an agriculturist when the suit was instituted by the mortgagor. The

contention was that it is suffice for the purpose of the Act that at the inception the debt was incurred and it is not necessary that the debtor must be

an agriculturist on the date when the proceedings were instituted. After reviewing earlier decisions, it has been held as follows:

... In order to entitle a debtor to claim relief u/s 13, he must be an agriculturist as defined in the Act on two crucial dates

(1) on the date of the debt (as otherwise it will not be a debt incurred by an agriculturist) and

(2) on the date of recovery thereof - through the process of Court, (as otherwise there would be no proceedings for recovery of a debt as defined

by the Act)

Following the same, In Thulasi Ammal v. Thasu R. Sami Iyer, 1977 (90) L.W. 413, it had been held as follows:

... The obvious inference therefore, is that the intention of the Legislature was to confer the benefits of the Act only on persons who are

agriculturists except those referred to in the proviso on the date the debt was incurred.

13. Though each case depends upon the facts of each case, considering the question, we are of the view that a person who want to take

advantage of the benefits of the Debt Relief Acts, should be an agriculturist on the date of incurring debt, and so also when the Act was amended

and also on the date of filing the suit. To this extent, we also fully agree with the view expressed by the earlier Full Bench.

14. In view of the above discussion and under the facts and circumstances of the case, we answer the reference in favour of the decree holders

and against the debtors. The reference is answered accordingly and the LPA is dismissed. No costs.

