

**(1945) 11 MAD CK 0022**  
**In the Madras High Court**

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|--------------------------------------------|------------|
| Neelam Suryanarayanamurti Naidu and Others | APPELLANT  |
| Vs                                         |            |
| Boggavarapu Satyanarayanamurti and Others  | RESPONDENT |

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**Date of Decision :** 05-11-1945

**Acts Referred:**

**Citation :** AIR 1946 Mad 264 : (1946) 59 LW 36 : (1946) 1 MLJ 54

**Hon'ble Judges :** Patanjali Sastri, J

**Bench :** Division Bench

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**Judgement**

Patanjali Sastri, J.—These connected appeals arise out of an application made by the respondent-creditor u/s 19-A of the Madras Agriculturists Relief Act. He alleged that the debtors, who are five in number, were not agriculturists entitled to the benefits of the Act; but prayed that if for any reason they were found to be agriculturists within the meaning of the Act, the Court should ascertain the sum properly payable under the mortgage executed in his favour. In support of his case that the debtors were not agriculturists, he filed certain certificates (Exs. P-3 to P-7) granted by the Commissioner, Coconada Municipality, which, he claimed, showed that the respondents who were said to be undivided were assessed during 1935-1937 to house and land tax in respect of properties whose annual rental value exceeded Rs. 600 so as to bring them within the mischief of proviso (C) to Section 3 (ii) of the Act. The debtors pleaded that they were divided and that if their individual shares in the properties were alone taken into account as they should be, the proportion of the annual rental value attributable to each of such shares would be well below the statutory limit of Rs. 600.

2. The petition was adjourned from time to time and was posted finally to 3rd July 1944. On that day it would appear that two of the debtors, respondents 1 and 2 in the lower Court, who appeared by a separate pleader were ready; but neither respondents 4 to 6 or their vakil appeared and the hearing was adjourned till 2 p.m. on that day to enable them to appear. Finding, however, that none of the respondents or vakils appeared when the case was called the learned Judge set all the respondents ex parte and pronounced judgment holding, on the

strength of the certificates filed by the creditor, that the debtors were not agriculturists entitled to the benefits of the Act and that the creditor was entitled to the amount due under the mortgage bond. From this order the debtors have preferred C.M.A. No. 690 of 1944. On the next day the debtors applied by separate petitions for setting aside the ex parte order and rehearing the original petition; The learned Judge dismissed these petitions holding that the grounds put forward for the non-appearance of the debtors and their pleaders were unconvincing and that their laches could not be condoned. Against these orders C.M.A. No. 691 of 1944 and 221 of 1945 have been preferred:

3. Mr. Somasundaram appearing for the respondent-creditor has raised a preliminary objection that all these appeals are incompetent and should be dismissed as such. The learned Counsel has argued that the order of the Court below on the main petition should be regarded as an order made u/s 19-A (4)(b) of the Act and as such is not appealable under the provisions of Section 25-A, as Sub-section (i) of Clause (c) of that section provides for an appeal only from orders made under clause (a) of Sub-section (4) of Section 19-A. As regards the other two appeals, Mr. Somasundaram has urged that they are also not maintainable, " as, although Section 19-A (8) may make the provisions of Order 9, Rule 13 of the CPC applicable to proceedings under the Act, it cannot also attract the right of appeal conferred under order 43 Rule 1 (d) of the Civil Procedure Code. We are of opinion that both the preliminary objections are well founded and must prevail.

4. As regards the objection urged in connection with C.M.A. No. 690 of 1944, the debtors have submitted that the order must really be deemed to have been made u/s 19-A (4)(a) as it does not purport to " dismiss " the application, as an order under Clause (b) of that sub-section should, but, on the other hand, " doth order and direct that the petitioner be and the same hereby is entitled to the amount due under the mortgage bond dated 17th October, 1931." There is no substance in this argument. The learned Judge found that the debtors were not agriculturists entitled to the benefits of the Act. Having come to that finding he should, no doubt, have proceeded to dismiss the petition; but without doing so in terms he went on to say that the petitioner was entitled to the amount due under the mortgage. It is however quite clear from his order that the learned Judge does not purport to ascertain the amount that would be properly payable under the mortgage if it was liable to be scaled down under the Act, and he has held that the debtors were disqualified under proviso (c) to Section 3 (ii) of the Act from claiming the benefit of the Act. The mere remark that the creditor was entitled to whatever amount was payable under the mortgage is not such a declaration as is contemplated under Clause (a) of Section 19-A (4). If the order is regarded as one made under Clause (b) of Sub-section (4) as we think it must be, then the question whether an appeal lies in respect of such an order is concluded by the decision in Mahaboob Ali Saheb and Another Vs. Khudratulla and Another, where it is pointed out that no right of appeal is given when an application for a declaration is dismissed on the ground that the debtor is not an

agriculturist or the debt is not one which can be scaled down under the Act.

5. Turning to the preliminary objection raised in respect of the other two appeals, it is contended for the debtors that Section 141 of the CPC which provides that the procedure provided in the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any Court of Civil Jurisdiction attract the application of Order 43, Rule 1 to proceedings u/s 19-A. We fail to appreciate this argument. Before the amending Act of 1943, Section 141 was no doubt held to make the Provisions of Order 9 applicable to proceedings under the rules framed under Act IV of 1938. Sub-section (1) of Section 19-A of the amended Act however now makes provision for the application of the procedure provided in the Code to proceedings u/s 19-A and it is no longer necessary to invoke Section 141 for the purpose. It is also difficult to see how either Section 141 (of the Civil Procedure Code) or Sub-section (8) of Section 19-A which only makes the procedural provisions of the Code applicable to proceedings under 19-A attract the substantive right of appeal conferred under Order 43, rule 1 (d). It has been repeatedly pointed out that a right of appeal is a creature of statute and is not in the nature of things. The provisions relating to rights of appeal under the Act are contained in Section 25-A and they confer no right of appeal against orders of the kind here in question. Furthermore, as we have held that the main case is not open to appeal, even Order 43, Rule 1 (d) would be of no avail to the appellants. These appeals, therefore, must also fail.

6. It is, however, urged for the debtors that there are sufficient grounds for interference by this Court in revision and that C.M.A. No. 690 of 1944 should be treated as a revision petition, on payment of the requisite Court-fee. We are inclined to accept this suggestion. The certificates of assessment filed by the creditor show that persons who are not shown to be in any way connected with any of the debtors were also assessed in respect of the properties in question. For instance, Ex. P-3 refers to Neelam Sri Ramamurthi, Tirupathirayudu and Venkataratnamma as having been assessed to property tax in the relevant period on properties of the aggregate rental value varying from Rs. 1, 180 to Rs. 1,189. Tirupathirayudu is said to be the father of respondents 4 and 5. But who the other two persons are and what shares they possessed in the properties assessed is not known, "for the petitioner has adduced no oral evidence on the point. The position is the same as regards the other certificates, except Ex. P-5 in which two of the debtors appear to have been assessed. It has been held by this Court that when once a person is shown to have a saleable interest in any agricultural land the burden of proving that he is disqualified under one or other of the four provisos to Section 3 (ii) lies upon the creditor. Here, the debtors would undoubtedly be agriculturists unless they come within the mischief of one or other of the provisos, because the mortgage in question includes agricultural land. The burden, therefore, of showing that the debtors were disqualified from claiming the benefits of the Act lay upon the creditor" and as already stated, he has adduced no evidence to show what shares the debtors had in the properties assessed in the names of the three individuals referred to above and whether

their Proportionate annual rental value exceeded Rs. 600.

7. In these circumstances there is no material on record to show that the debtors come within the mischief of proviso (C) which the creditor has invoked. It would appear from the order of the learned Judge that he did not seriously apply his mind to the decision of the case, but, finding that the debtors and their pleaders did not appear when the petition was taken up, he simply assumed that the certificates filed by the creditor were sufficient to bring the debtors within the proviso [C]. We are of opinion that in thus disposing of the matter he acted with material irregularity in the exercise of jurisdiction.

8. We therefore allow C.M.A. No. 690 of 1944 and the memorandum of objections filed therein to be converted into civil revision petitions on payment of the additional court-fees by the parties concerned and direct that the matter be then sent back to the lower Court for disposal after a fresh hearing at which both parties will be given an opportunity to produce their evidence. Having regard to all the circumstances of the case, we make no order as to costs. The other two appeals, C.M.A. Nos. 691 of 1944 and 721 of 1945 will be dismissed with costs.