

(1953) 09 MAD CK 0005

In the Madras High Court

Case No : Letters Patent Appeal No. 70 of 1953

Paramasiva Mudaliar of unsound mind by guardians,
Dhanakoti Ammal and Another

APPELLANT

Vs

D. Rangachariar

RESPONDENT

Date of Decision : 22-09-1953

Acts Referred:

Usurious Loans Act, 1918 — Section 3, 3(1), 3(2)

Citation : AIR 1954 Mad 764 : (1954) 67 LW 138 : (1954) 1 MLJ 42

Hon'ble Judges : Rajamannar, C.J.; Venkatarama Aiyar, J

Bench : Division Bench

Advocate : M.S. Venkatarama Iyer, for the Appellant; S. Jagadesa Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—This is an appeal by the defendant against the judgment of Basheer Ahmed Sayeed J. in C. C. C. A No. 81 of

1950. The suit properties belonged to one Subramania Mudaliar. On 11-9-1924, he executed a mortgage in favour of the appellant for a sum of

Rs. 10,000. The properties comprised in the mortgage are two shrotriam villages called Palayanoor and Kolambakkam, and also certain house

properties within the City of Madras. The mortgage bond provides that interest should be paid at 10 per cent, per annum and that in case of

default it should be paid at the rate of 12 per cent, per annum compounded annually. On 21-10-1931, Subramania Mudaliar executed a lease

deed in favour of the plaintiff with reference to the shrotriam villages and also certain lands. The net income from them was fixed at Rs. 5,950. The

appellant was to make several payments out of it, including a peishcush of Rs.

2,500 to the Government and a sum of Rs. 2,900 thereof was to be credited towards the mortgage bond.

On 17-7-1943, accounts were settled between the parties, and it was found that a sum of Rs. 3062-10-0 was due to the plaintiff towards the

balance of principal. The present suit is to recover this amount with subsequent interest at 10 per cent, compound interest. The defendant in the

action is the son of Subramania Mudaliar who had died before suit. The suit was dismissed by the learned City Civil Judge on the ground that

Subramania Mudaliar was an agriculturist entitled to relief under the Usurious Loans Act 10 of 1918 as amended by Madras Act 8 of 1937.

Against that judgment, the plaintiff preferred C. C. C. A. No. 81 of 1950.

Basheer Ahmed Sayeed J. who heard the appeal disagreed with the learned City Civil Judge on the question as to whether the defendant was

entitled, to relief under the Usurious Loans Act. He held that the defendant had not established that he was an agriculturist within the meaning of

that Act and that therefore he was not entitled to relief thereunder. A further contention was also raised on behalf of the defendant that the rate of

interest claimed, viz., 10 per cent, compound interest was excessive and that it should be reduced. The learned Judge held that having regard to the

facts of the case the rate of interest agreed to between the parties was not excessive and that the plaintiff should accordingly be awarded interest at

10 per cent, compound interest. In the result, he granted a decree as prayed for. Against that judgment, the defendant has preferred this appeal.

2. Learned counsel for the appellant has raised two contentions in support of this appeal (1) that the appellant is an agriculturist entitled to relief

under the Usurious Loans Act and (2) that the rate of interest awarded is excessive.

3. On the first question, it must be noted that no plea is distinctly raised in the written statement that the appellant is an agriculturist entitled to relief

as such under the Usurious Loans Act. There is a general plea taken that he is entitled to relief under that Act. The Act, however, confers benefits

both on agriculturists & non-agriculturists, there being special provisions in favour of the former. If, therefore, the defendant wanted that relief

should be given to him on the basis that he was an agriculturist, it was a matter which he should have alleged and proved. Not merely was there no

avermment in the written statement that he was an agriculturist; no evidence whatever, oral or documentary, was adduced at the trial to prove that.

The plaintiff filed his mortgage deed and the documents of title relating to the mortgaged properties. On the basis of some recitals found in those

documents, a contention appears to have been raised at the time of arguments that the defendant was an agriculturist. The learned City Civil Judge

observed: ""in this particular case the defendant seems to be cultivating a portion of his lands on "pannai"."" There is, however, no evidence in

support of this observation. Exhibit A-1, the mortgage bond, shows that Subramania Mudaliar was the owner of two shrotriems. That does not

very much help the appellant. Reliance is chiefly placed on Ex. A-6, which is a deed of lease executed on 7-11-1922 by Subramania Mudaliar in

favour of one Raghavachariar. On 17-5-1922, Subramania Mudaliar had executed a usufructuary mortgage of some of his properties in favour of

this Raghavachariar. He entered into an arrangement common in such cases by which he himself continued to be in possession under a lease back

from the mortgagee. Exhibit A-6 is such a document. That document only shows that the usufructuary mortgagee did not in fact get into actual

possession. That does not show that the mortgagor was actually cultivating the lands. On these documents, it is impossible to hold that the

appellant is an agriculturist within the Usurious Loans Act.

4. Mr. M. S. Venkatarama Aiyar, learned counsel for the appellant, argues that as the documents show that the appellant owns not merely the

shrotriern lands but also pannai lands and lands in ryotwari tracts, it must be taken that he is an agriculturist within the meaning of that Act. But this

is to assume that every owner of land is also an agriculturist. There is no definition of the word ""agriculturist"" in the Usurious Loans Act. But it is

established by a series of decisions that a person is an agriculturist under that Act only if he pursues the calling of an agriculturist. Vide -- SV. L.

SV. Sevugan Chettiar Vs. Chinnasami Reddiar and Another, , Modalavalana Mukundarao and Others Vs. Hanumantha Suryanarayana Naidu, ; --

K. Venkanna Chettiar and Sons by Managing Partner, K.V. Muthukrishna Chettiar Vs. K.K. Shaik Muhammad Rowther and Another, and --

Pothukuchi Venkata Ramanayya and Others Vs. Daggubati Mallikharjanudu, . If what all is established, therefore, -is that a person is an owner of

lands, that would not be sufficient to entitle him to relief under the Act. There are rich landowners who do not cultivate lands, some of them are

persons known as absentee landlords.

On the other hand, there may be agriculturists who do not own any lands. Unless, therefore, evidence is adduced to show that Subramania

Mudaliar was actually cultivating the lands and pursuing it as a calling, he would not be entitled to relief under the Act. We agree with Basheer

Ahmed Sayeed J. that the defendant has not established that he is an agriculturist entitled to relief under that Act. Mr. M. S. Venkatarama Aiyar,

learned counsel for the appellant, wanted that a further opportunity should be given to him to adduce evidence on the point. We do not think this is

a fit case in which such permission should be granted. Subramania Mudaliar was the owner of two shrotriems apart from other properties, and he

never claimed any relief under the Usurious Loans Act.

Notices passed between the parties prior to the institution of the suit. On 4-6-1946, the plaintiff sent a notice to Subramania Mudaliar, calling upon

him to pay the balance of the amount due under the mortgage, Ex. A-9. To that, Subramania Mudaliar replied through counsel on 17-6-1947, Ex.

A-10. Therein, he does not dispute his liability to pay the amount, but merely asks for six months time to pay it. In O. P. No. 58 of 1948 in the

District Court of Chingleput, again the amount due under the mortgage was admitted on behalf of the appellant to be Rs. 3,066 principal and

interest approximately Rs. 2,000. As already stated, the written statement does not raise any plea that the defendant was an agriculturist entitled to

relief under the Act. Under these circumstances, we decline to give any further opportunity to the appellant to adduce evidence that he is an

agriculturist.

5. The second point raised on behalf of the appellant is that ten per cent compound interest which has been claimed and awarded is excessive. The

contention is that any rate of interest which is in excess of 12 per cent simple interest would be excessive under the Usurious Loans Act and that

ten per cent compound interest works out to more than 12 per cent simple interest and that therefore interest should not be granted at that rate.

Reliance is placed on the decision of Govinda Menon and Ramaswami Goundar JJ. in -- Buragada Venkatarao and Another Vs. Godavarti

Venkatratnam and Others, . In that case, the primary rate of interest was Rs. 1-0-6 per cent, per mensem compound interest with annual rests.

The learned Judges reviewed all the authorities bearing on the question and came to the conclusion that any rate of interest in excess of 12 per cent

simple interest would, in the absence of special circumstances, be bad under the Usurious Loans Act. They accordingly reduced the rate of interest

to 12 per cent, per annum simple interest. But, in this case, the primary rate of interest is only 10 per cent. Therefore, it is not open to attack under

the provisions of the Usurious Loans Act as excessive.

It is true that there is considerable authority for the position that a provision for payment, in case of default, of compound interest at enhanced rate

would be penal. But, in this case, the plaintiff has claimed ten per cent compound interest. We are unable to say that that is not a fair rate of interest

to award. It must be remembered that the plaintiff took a second mortgage over shrotriem lands. As security for the repayment of the amount, the

melwaram due to the mortgagor was assigned, and considerable difficulty had to be faced in collecting the rents from the ryots. The defendant

raised a question as to the extent of his liability under the mortgage deed as a member of a Mitakshara joint family. Under the circumstances, it

cannot be said that the primary rate of interest is unfair. We agree with Basheer Ahmed Sayeed J. that the award of ten per cent compound

interest would, under the circumstances, be quite reasonable.

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