

(1956) 03 MAD CK 0017
In the Madras High Court

Pichuratnam Ayyar

APPELLANT

Vs

A. Muthuratnam Ayyar and Others

RESPONDENT

Date of Decision : 15-03-1956

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 4(d)

Citation : (1956) 2 MLJ 286

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Division Bench

Judgement

Krishnaswami Nayudu, J.—The only question that requires to be determined in this appeal is as to whether the defendants are entitled to

relief under the Madras Agriculturists' Relief Act IV of 1938. The suit is on hypothecation bond and the interest stipulated was 8 per cent, per

annum, compound interest. The plaintiff claims exemption u/s 4(d) of the Act which says

that the provisions of the Act will not affect any debt contracted on the security of house property alone in a municipality, a cantonment, or a

panchayat which was a union before the 26th August, 1930.

The property is situated within the limits of the Union of Ariyalur and the question is whether the property is "house property". The property in

question consists of a brick-built house in Survey Number 207 and the back portion of it is on Survey No. 201, but both are adjacent to each

other being separated by a compound wall. The property is probably situated in a corner at the junction of two streets; the front portion is situated

in S.F. No. 207 in Ponnuswami Aranmanai Street while the rear portion is on S.F. No. 201 in Kotha Street.

2. It is found that in the adjacent plot garden crops are raised and there is also a thatched house, a well and a latrine in that garden. It is common ground that the well and the latrine are intended for the use of the occupants of the house. The question, therefore, is whether the property would come within the meaning of house property u/s 4 (d) of the Act. The Courts below took different views, the appellate Court holding that the property in question must be considered as house property on the application of the provisions of Section 4(d). I have been referred to a judgment by a Bench of this Court to which I was a party in Subbarayulu v. Venkataramanamma (1952) 2 M.L.J. 880 : ILR (1953) Mad. 650, where we approved of the meaning given to the expression ""House Property"" in V. Ponnambalam Chetti and Others Vs. Ambalam Raman Chetti and Others, and it was held that ""House Property"" in the clause means not only the house and the site on which the house stands but also the site that is appurtenant to the house and which is necessary for its enjoyment. It includes garden, compound and yard which are enjoyed as part of the house. If, however, there is an independent site which is intended for a different purpose such as building and is treated as a separate unit by the parties and also in the assessment" registers of the panchayat union or the municipality it should be treated as not forming part of the house, property and if such item is included in the mortgage deed along with the other house property the clause does not apply as the security was not created on the house property alone within the meaning of the clause. In the present case it is alleged that it is an independent site, treated as a separate unit and there was a separate survey number and that therefore the garden portion could not be treated as part of the house property. But the test is whether the garden portion is necessary for the enjoyment of the house as to which there can be no doubt as the well and the latrine situated in the garden are intended for the use of the occupants of the house and therefore the garden must be considered as an appurtenant to the house and is necessary for the enjoyment by the occupants of the house. The mere existence of a compound wall between the house and the garden, with assumably an access by a doorway to the garden, is not sufficient to treat the" garden as an independent site intended for a different purpose and on the facts of the case I am satisfied that the learned Subordinate Judge took the correct view in exempting the mortgage debt from the

applicability of the provisions of the Madras Act IV of 1938.

3. Another contention was raised by Mr. Suryanarayana that in any event 8 per cent, compound interest on the mortgage sum was usurious under

the provisions of the Usurious Loans Act as the defendants are agriculturists. This contention, however, was not raised or argued in the Courts

below and it is not open to the appellant to raise it for the first time in Second Appeal, The Second Appeal fails and is dismissed but in the

circumstances there will be no order as to costs. No leave.