

(1963) 02 KL CK 0022

In the High Court Of Kerala

Case No : Appeal in Suit No. 542 of 1961

Pundoor Radhakrishna Punchithaya and Others

APPELLANT

Vs

H. Sanjeeva Rao and Others

RESPONDENT

Date of Decision : 15-02-1963

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1958 — Section 3(2)

Citation : AIR 1963 Ker 348

Hon'ble Judges : T.K. Joseph, J; K.K. Mathew, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; K.S. Subramonia Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Joseph, J.—This appeal which is from the decree in a suit for money under a simple mortgage relates only to the question of costs. The appellants who were defendants in the suit contended that the court below erred in allowing the plaintiff his costs and disallowing the costs of the defendants. The contention is based on section 3 (2) of the Kerala Agriculturists Debt Relief Act, 31 of 1958, as amended by Act 2 of 1961. Act 31 of 1958 came into force on 14-7-1958 and the suit was filed on 11-11-1958, i. e., before the expiry of six months from the commencement of the Act. Section 3 (2) provides :

"Where a creditor files a suit for recovery of a debt before the expiry of six months from the commencement of this Act or after the agriculturist has paid or deposited the sums and instalments specified in section 4 and, during the period when he is so entitled to pay, the Court shall in decreeing the suit direct the plaintiff to bear his own costs and to pay the costs of the defendant who is an agriculturist, except in cases where the claim would have been barred by limitation had no such suit been filed or when, a debt is jointly due from an agriculturist and non-agriculturist :

Provided that nothing contained in this sub-section shall be a bar to the court passing any order as to costs as between" the plaintiff and other defendants who are not agriculturists".

2. The principles governing appeals relating to costs have been summarised in Chitaley's Commentary on the CPC thus :

"An appeal from a direction as to costs will, therefore, lie only -

(a) where the court has not exercised any real discretion in making the direction or

(b) where the exercise of discretion is not judicial, that is, based on sound and well established legal principles; in other words, where the direction as to costs involves a matter of principle, or

(c) where the direction as to costs is based on a misapprehension of fact or law."

3. The facts of this case are somewhat peculiar. The appellants came within the broad definition of agriculturist but as the Act originally stood there was a clause excluding persons liable to pay basic tax exceeding one hundred and fifty rupees per annum in any three years after 1950-51 and before the commencement of the Act. The explanation to this clause provided that

"a person shall be deemed to be liable to pay basic tax exceeding one hundred - and fifty rupees per annum, if he would have been so liable had the Land Tax Act, 1955, been in force throughout the State of Kerala during the said period."

The extent of the property owned by the defendants' family, as seen "from the partition deed. Ex. P-5, exceeded 75 acres, so that the defendants would have been liable for basic tax exceeding Rs. 150/- had the Land Tax Act been applicable to the region where the property is situate. This provision in Act 31 of 1958 was deleted by the Amending Act of 1961. The position would have been simple but for the provision in Section 1 (2) of Act 2 of 1961 which provided that the Amending Act would be deemed to have come into force on the 14th day of July, 1958, i. e., the date of Act 31 of 1958.

4. According to the appellants, the effect of Act 2 of 1961 is that they were agriculturists-within the definition of the Act even in 1958 and the consequence of filing a suit against agriculturists before the expiry of six months from the commencement of the Act should follow. Thus-it is argued that the court below should have given effect to Section 3 (2) of Act 31 of 1958 and directed the plaintiff to bear his costs and to pay the costs of the defendants, notwithstanding the fact that they were not agriculturists on the date of institution of the suit.

5. This is a case in which there was no-legal impediment in instituting the suit on II-II-1958. The Debt Relief Act as it then stood contained no prohibition against the institution of the suit. The plaintiff was justified in filing the suit as the defendants did not pay the mortgage money. The defendants raised several untenable contentions in the suit. Normally the trial court would have been quite

justified in passing a decree for costs, in the manner it did. The question is whether the plaintiff should have anticipated that Act 31 of 1958 will undergo modification three years later or that the suit would be pending for three years. Had the suit been decided before Act 31 of 1958 was amended, in 1961, the defendant could not have legitimately complained about the decree for costs, as Act 31 of 1958 was not applicable to them until it was amended.

6. The effect of amending Act 2 of 1961 in this manner is that by a fiction, the amendment made in 1961 is deemed to have been in the original Act from 1958. The question is how "this fiction is to be construed in this case. It has been said that Equity is the life of a legal fiction.

"Since equity is the life of legal fiction, where substantial justice does not require its interference, still more where it would suffer from its operation, fiction has no place"

(Brooms Legal Maxims - 10th Edn., p. 80)

7. Lord Mansfield observed in *Morris v. Pugh* (1761) 3 Burr. 1241 at p. 1243;

Fictions of law hold only in respect of the ends and purposes for which they were invented. When they are urged to an intent and purpose not within the reason and policy of the fiction, the other party may show the truth."

It has been held by the Supreme Court in *Commissioner of Income Tax, Delhi Vs. S. Teja Singh*, :.

"It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate."

8. The legal fiction here is that the provisions of the amending Act are deemed to have been in the original Act from the date of its commencement. - In order to give effect to the fiction we will have to assume that the appellant was an agriculturist from the date of Act 31 of 1958. We do not think "the reason and policy of the fiction" warrant the assumption that what was done in 1958, viz., the institution of the suit was in violation of the provisions of" the Act. We will not be justified in overlooking the principle of law which enjoins courts to adjudge the rights and liabilities of the parties as on the date of institution of the suit, as to do so will be to traverse outside the reason and policy of the fiction. The fiction may enable us to hold that the defendant was an agriculturist on the date of the commencement of Act 31 of 1958 but not that the suit filed in 1958 was filed only later. We therefore decline to interfere with the decree for costs.

9. The appeal fails and is dismissed but, in the circumstances without costs.