
(1945) 10 MAD CK 0012
In the Madras High Court

Puthukuzhi Neelakantam Nambisan's son Karnavan Sankaran Nambisan APPELLANT

Vs

Koottal Manikkam Devaswam Utama Manikkam Keralan Thachutayya Kaimal Avergal RESPONDENT

Date of Decision : 08-10-1945

Acts Referred:

Citation : AIR 1946 Mad 158 : (1945) 58 LW 632 : (1945) 2 MLJ 535

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This appeal arises out of an application u/s 19 of the Madras Agriculturists' Relief Act, 1938, to scale down the decree

passed in O.S. No. 46 of 1932 on the file of the Subordinate Judge's Court of Ottapalam.

2. The decree was passed upon a hypothecation bond executed by defendants 1 to 4 who were members of a tarwad governed by ordinary

Hindu Law. Defendants 1 to 3 are brothers and the fourth defendant is the son of the first defendant. The mortgaged properties having been sold, a

personal decree for the balance remaining due on the hypothecation was passed on 27th January, 1938. Certain properties, belonging to the family

which had already been attached were sought to be sold in execution of this decree. At that stage the fourth defendant filed an application (E.A.

No. 878 of 1940) u/s 20 of the Act for stay of execution, and stay was ordered. But the fourth defendant did not file any application for scaling

down the decree u/s 19 within sixty days thereafter. The first defendant who is the manager of the family applied again for a stay of execution in

E.A. No. 1055 of 1943 on 20th December, 1943. This petition was dismissed so

far as the properties of the tarwad were concerned, but stay was ordered as regards the first defendant's personal liability under the decree. The first defendant then filed the present application as the karnavan of the tarwad for scaling down the decree u/s 19 of the Act. This application was dismissed as barred by time under the proviso to Section 20. Hence this appeal.

3. The question of bar u/s 20 arises not with reference to the stay obtained by the first defendant in E.A. No. 1055 of 1943, for the present application u/s 19 was admittedly filed within sixty days of the order of stay, but with reference to the stay obtained by the fourth defendant in his earlier application for stay E.A. No. 878 of 1940 which, as we have already stated, was allowed. It is argued for the appellant (first defendant) that inasmuch as the Court which was executing the decree was also the Court which passed the decree, Section 20 had no application to this case, that therefore the application made by the fourth defendant under that section for stay should be ignored and that as this Court has held in *Kumaraswami Pillai and Another Vs. Thiruvengadatha Aiyangar*, that apart from the period prescribed under the proviso to Section 20, there is no period of limitation for making an application u/s 19, the present application should not have been dismissed as barred by time. We are unable to accept this contention. There is nothing in Section 20 of the Act as we read it to warrant the distinction sought to be made on behalf of the appellant between an execution proceeding taken in a Court which passed the decree and a similar proceeding taken in a Court other than the one which passed the decree. In both cases applications for stay can be made u/s 20 and if a stay is ordered, then the proviso to the section is attracted so as to make it incumbent upon the judgment-debtor to file an application for relief u/s 19 within sixty days of the stay order.

4. It was next urged that the fourth defendant who is only a junior member of the tarwad had no authority to make an application on behalf of the tarwad u/s 20 and any stay order obtained by him could not operate to bar an application made by the karnavan u/s 19 even though the latter application was filed beyond sixty days of such order. It is no doubt true that a junior member of a Hindu joint family cannot act so as to bind the family as a whole by the consequences of his Act. But Section 19 of the Act

expressly empowers, in the case of a debt due by a joint Hindu family, any member of the family whether or not he is the judgment-debtor to apply for relief under that section, and as the relief of stay u/s 20 is only ancillary to the application for the relief obtainable u/s 19, it must follow that any member of a joint family in the case of a family debt must also have the power to apply for stay u/s 20. We are therefore of opinion that although the fourth defendant was not the karnavan or the manager of the family, the consequence of his obtaining the stay order u/s 20 in E.A. No. 878 of 1940 was to make the period of limitation provided in Section 20 applicable to the present application made by the first defendant as the manager or karnavan of the family. This contention therefore must also be rejected.

5. In the result the appeal fails and is dismissed with costs.