

(1940) 10 MAD CK 0046
In the Madras High Court

S. Venkiteswara Aiyar

APPELLANT

Vs

T.N. Ramaswami Aiyar and Others

RESPONDENT

Date of Decision : 28-10-1940

Acts Referred:

Citation : (1941) 53 LW 24 : (1941) 1 MLJ 9

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal raises a question of appropriation with reference to an application u/s 19 of Madras Act IV of 1938. The appellant, who is the applicant in the Court below, was the first defendant in this suit.

2. The debt, so far as we need trace it back, starts with a principal of Rs. 7,250 as on 27th April, 1925, when a security bond was executed. Before the suit there were certain payments, the exact figure of which seems to be doubtful. The suit was filed in 1928 for a sum of Rs. 11,500. It ended in a decree which, so far as defendants 3 to 5 were concerned was based on a compromise and the same decree was made applicable to first and second defendants who allowed the suit to proceed ex parte. The decree provided for a payment of Rs. 12,116, within four months or in default for payment of Rs. 14,116, with interest at six per cent. No payment was made. The hypotheca mortgaged under the security bond was sold and realised Rs. 5,420 which was credited to the decree and part satisfaction was recorded. An application was preferred for a personal decree for the balance. We have not got this actual application before us, but the personal decree indicates that Rs. 5,420 realised by the sale was credited and presumably it must have been credited first towards interest due on the decree amount and then towards the principal sum decreed. For the balance, a personal decree was passed. Thereafter there were two payments aggregating to Rs. 2,476 made in 1932 and 1933. In 1937 the decree was assigned to the present respondent who took out execution for a sum of Rs. 11,156-5-5 on 23rd September, 1937. While this execution was pending, Madras Act IV of 1938 came into force and the first

defendant applied for a stay of sale and filed the present application u/s 19 on 20th September, 1938. It is not disputed that the way in which the lower Court has treated this application is incorrect. The learned Judge has treated the decree as a compromise decree (which, so far as the first defendant is concerned, it was not) and has taken the principal of the decree as the principal of the debt, a procedure which, even on the footing of its being a compromise decree, could hardly be supported on the facts of this case.

3. It is contended for the appellant that both the payments made before the suit and the amount of Rs. 5,420 realised by the sale in 1930 must be regarded as open payments and that the interest outstanding on 1st October, 1937, must be wiped off without regard to these payments. The contention with reference to the payments before suit is that these were payments credited to a debt which carried compound interest, that there was no benefit to be derived by the creditor in adjusting these payments to interest rather than to principal and that on the basis of the decision in *Parr's Banking Co. v. Yates* (1898) 2 Q.B. 460, there is no presumption in such a case that the payments were first appropriated to interest. With reference to the sale amount credited to the decree at the time of the application for " a personal decree, the contention is that though there may have been an appropriation towards the interest which had then accrued due on the amount decreed, there was no appropriation towards interest except to this extent and that at least the balance after deducting the accrued interest on the decree must be treated as an open payment.

4. We find ourselves unable to accept either of these contentions. The question is not whether the creditor can prove positively an appropriation of these amounts, towards interest, but whether the debtor is in a position to show that on 1st October, 1937, these amounts had not been adjusted in reduction of interest and consequently that interest was outstanding unrealised. In the case of the payments before the suit, they were certainly adjusted to the debt and a balance was struck and the suit claim proceeded on the footing of this balance with interest thereon. They cannot therefore be regarded as unadjusted payments. When once it is conceded that these payments have been adjusted towards the debt, they must have been adjusted in reduction of either interest or principal and the debtor not being in a position to show that they have been adjusted in reduction of the principal, it follows that to the extent of these payments he cannot show that there was on 1st October, 1937, interest outstanding. Similarly with reference to the payments made as a result of the sale after the decree, there is a demonstrable appropriation towards interest due under the decree. The balance of the payments has certainly been adjusted towards the decree debt which itself is made up of principal and interest, Thus with reference to this balance though the creditor is not able to prove that the money was appropriated towards the interest, the debtor is unable to prove that the payment was appropriated towards principal. He is therefore not in a position to show to the extent of this payment that interest was outstanding on 1st October, 1937. The two later payments made in 1932 and 1933 have not been shown to have been

adjusted to the debt before the Act came into force. They cannot therefore be regarded as having reduced the amount of interest outstanding on 1st October, 1937. The position, therefore, is that on 1st October, 1937, there was a sum of Rs. 7,250, the principal of the debt and two payments aggregating ,Rs. 2,476 which had not been appropriated and were available to go in reduction of the principal as on that date. The balance Rs. 4,774 will carry interest at the decree rate of six per cent. from 1st October, 1937.

5. The decree will be amended accordingly. As each party has succeeded to some extent, each party will bear his own costs in this Court. No separate orders are necessary on the memorandum of cross-objections.