

(1945) 01 MAD CK 0035
In the Madras High Court

Sammeta Gangadharudu and Another	APPELLANT
Vs	
Peddibhotla Mahalakshamma and Others	RESPONDENT

Date of Decision : 24-01-1945

Acts Referred:

Citation : (1945) 58 LW 141 : (1945) 1 MLJ 468

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal arises out of a mortgage executed on the 13th June, 1931, in favour of the two plaintiffs and the eighth

defendant. The only question is whether as against the first plaintiff who is a woman not owning other property, the appellants can claim relief

having regard to the provisions of Section 4(h) of Madras Act IV of 1938. This sub-section exempts from the operation of the Act any debt or

debts due to a woman on the 1st October, 1937, who on that date did not own any other property, provided that the principal amount of the ,debt

or debts did not exceed Rs. 3,000. The trial Court held that the debtors were entitled to relief against all the three mortgagees, taking the view that

a debt due to one woman and two men was not a debt due tp a woman. Incidentally, the plaint conceded that in calculating the relief due as against

the second plaintiff and the eighth defendant the debtors were entitled to trace the principal back to the principal of the antecedent notes, which is

not correct; for the creditors under the mortgage are different from the creditors under each of these two antecedent notes. The second plaintiff

and eighth defendant did not, however, prefer any appeal. The first plaintiff appealed to the lower Court, and the lower Court held that although

the debt was due to her along with the others who could not claim exemption, she being a woman must be entitled to a decree for the full amount

claimed without scaling down. Against this decision, the debtors appeal.

2. There is an unreported case A.A.A.O. No. 201 of 1943 in which without any consideration of previous decisions on the point, it was held by

one of us that a debt due to a husband and wife was not a debt due to a woman. It was not however contended on the facts of that case that it

was possible to divide the debt into that part which was due to a woman and that part which was due to a man. It is possible that a different result

might have been achieved had the attention of the Court been drawn to the decision in Bhadrachalam v. Nagarupavqtmamma (1040) 2 M.L.J. 342.

That was a case in which the debt was due by an agriculturist to two women and the evidence was not clear regarding the right of either of the

women or both to exemption under Sub-section (h) of Section 4. It was then held that when there is a debt due to two women jointly or as co-

owners and relief is claimed by the debtor under the Act, in order to determine whether either of the creditors is entitled to resist that relief, the

Court must look to the amount of the debt due to that creditor, the amount of other debts due from agriculturists to that particular creditor and the

possession of other property by that creditor not covered by the explanation, that is to say, when the Court has to adjudicate under the Act on a

debt due to two women jointly or as co-owners, the interest of each woman in the debt and the assets of each woman apart from the debt must be

taken into consideration in order to determine whether each woman is entitled to claim the exemption u/s 4(h). If this decision is correct, as we

think it is, it is difficult to resist the further step that when there is a debt due to a woman and a man and the amount of the debt due to each can be

ascertained, if the woman is entitled to the protection u/s 4(h) of the Act, to the extent of her interest in the debt, the agriculturist should be refused

relief, while he should be given relief to the extent of the interest in the debt belonging to the man. That procedure is in line with our decisions in

cases where a debt is owed jointly by an agriculturist and a non-agriculturist. In such cases we give relief to the agriculturist and refuse relief to the

non-agriculturist, even though it might be argued in such cases that when a debt is owed by an agriculturist and a non-agriculturist it is not a debt

due from an agriculturist. We are therefore of opinion that the decision in Bhadrachalam v. Nagarupatavamma (1040) 2 M.L.J. 342 indicates the

correct procedure not only when the debt is due to two women but also when the debt is due to a woman and two men and the share of each in

the debt can be ascertained.

3. In the result, the second appeal fails and is dismissed with costs.