
(1941) 10 MAD CK 0036
In the Madras High Court

Singamsetti Sundaram and Others

APPELLANT

Vs

Singamsetti Subba Rao

RESPONDENT

Date of Decision : 06-10-1941

Acts Referred:

Citation : AIR 1942 Mad 402 : (1942) 55 LW 160 : (1942) 1 MLJ 327

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition raises a question of the interpretation of Section 6 of Act IV of 1938. The facts as stated in the judgment of the lower Court are that the suit was based on a promissory note of 1933 made by the first defendant in favour of the plaintiff, defendants 2 to 5 being impleaded as the joint sons of the first defendant. There was no oral evidence, but it appears from the decree that the suit debt relates back to prior transactions starting in 1922. The plaintiff produced a copy of an Income Tax assessment order which showed that the first defendant along with certain partners was assessed to Income Tax for the financial year 1936-37 and on this ground it was held that neither he nor his sons, defendants 2 to 5, could claim the benefit of the Agriculturists' Relief Act. The petitioners rely on a decision of ours in Rajoo alias Doraisami Goundar and Others Vs. Palaniyappa Chettiar and Others, where we held in a case u/s 19 when the sons of the deceased judgment-debtor sought to scale down decrees on joint family debts that it was necessary to investigate the question whether the Income Tax assessment of the deceased judgment-debtor was in respect of the family income or in his individual capacity and the case was remanded to the lower Court for disposal after inquiry into this question. We did not actually decide that if the father was assessed to Income Tax in his individual capacity the undivided sons would be able to claim the benefit of the Act. But the assumption that this is so is implicit in our judgment.

2. When that case was decided it was not argued that Section 6 of Act IV of 1938 would bar the sons from claiming the benefit of the Act. That contention has now

been put before us. Section 6 provides that,

where in an undivided Hindu family... which is an "agriculturist" within the meaning of Section 3 (ii)., any member of the family is not an agriculturist, then, notwithstanding anything contained in Section 3 (ii), none of his sons and descendants in the male line shall be deemed to be an agriculturist for the purposes of, Sections 7 to 12 and 19 to 27 of this Act.

Prima facie the section appears to contemplate the existence of a larger agriculturist unit consisting of a family of several branches, one branch of which is headed by the father who is disqualified from being an agriculturist under one or other of the provisos to Section 3, in which case his sons would be equally disqualified so long as they were joint. We are, however, confronted with the position in which there is no larger unit which can be said to be agriculturist. The family consists only of the father and the son's. If Section 6 applies, the effect would be that the whole family would be disqualified from being agriculturist; that is to say, the effect of the application of Section 6 would be to destroy the foundation for the application of Section 6. For Section 6 can only apply where in an agriculturist family one member is a non-agriculturist. We find it difficult to hold that this section can apply to the state of affairs in which its very application would destroy its applicability. Rather than come to this conclusion, we prefer to adhere to the plain language of the section and confine its scope to the position in which there is a major family unit which even after the application of the section still remains an agriculturist family and in such circumstances the scope of the section would be to exclude from the benefits of the Act any member of such an agriculturist family who was a non-agriculturist and his descendants in the male line. This view is also consistent with the assumption made in our decision quoted above.

3. The result therefore is that the decree so far as it concerns the first defendant, the father, must be confirmed ""and the petition of the first defendant must be dismissed with costs. The petition,so far as it relates to the other defendants is allowed and the case is remanded to the trial Court which will inquire, firstly, whether the assessment to Income Tax of the first defendant was made in his individual capacity or as manager of the joint family of himself and his sons. If the former is the case, the lower Court will then inquire into the antecedent history of the debt for the purpose of ascertaining the relief to which the sons are entitled. As the contention upon which defendants 2 to 5 have succeeded in this Court is not expressly taken in the revision petition, we think it reasonable to require these petitioners to bear their own costs in revision.

4. Petition of the first defendant dismissed. Petition so far as it relates to others allowed.