(1982) 02 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 8087 of 1981

Sundarambal Achi — APPELLANT

Vs

The Appellate Authority and Sub. Collector, Kumbakonam and Another — RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 9
Tamil Nadu Debt Relief Act, 1980 — Section 4, 5, 6

Citation : AIR 1983 Mad 278 : (1983) ILR (Mad) 35 : (1983) 96 LW 71 : (1983) 1 MLJ 346

Hon'ble Judges : Ramanujam, J;Maheswaran, J

Bench : Division Bench

Advocate : V. Santhanam, for the Appellant; S. Jagadeesan, for Govt. Pleader and K. Parabhakaran, for the Respondent

Judgement

Ramanajum, J.—The petitioner herein is a creditor and the second respondent herein is a debtor who has borrowed a sum of Rs.1,200 from

the former on a pro note. After the coming into force of the Tamil Nadu Debt Relief Act (13 of 1980) the second respondent filed an application

before the Special Tahsildar (Debt Relief) Kumbakonam for a certificate of discharge of the said loan on the ground that the second respondent

was not a debtor as defined in the Act as he was holding immovable property other than cultivable lands to the value of Rs. 38,000. On appeal by

the bet or the second respondent therein the appellate authority held that the second respondent is entitled to the benefits of that Act as he has not

been shown to posses immovable property worth more than Rupees 25,000 and that the certificate given by the Tahsildar Thiruvidaimarudur,

stating that the certificate given by the Tahsildar. Thiruvandaimarudur stating that the debtor owns properties worth about Rs. 38,000 cannot be

accepted on the ground that he is not the competent authority and that even otherwise the certificate gives only an approximate value and not the

actual market value.

2. In this writ petition the petitioner questions the validity of the order of the first respondent the appellate authority on the ground that the certificate

given by the Tahsildar. Thiruvidamarudur should have been accepted as he is a competent authority prescribed for the purpose in G.O.M.S. 2614.

Revenue dt 24-11-1980. The reason why the first respondent has ignored the certificate given by the Tahsildar, Thiruvidaimarudur is that he is not

a competent authority to vie the certificate as to the ever, the appellate authority has overlooked the Government Order Ms. No. 2614 Revenue

dated 24-11-1980 under which the Tahsildars or Deputy Tahsildars have been appointed as prescribed authority for determining the value of the

properties under the Explanation to S. 3(d) (vi) and (vii). The appellate authority therefore is not right in stating that the Thasildar Thiruvidaimarudur

was not the competent authority to give the certificate of valuation.

3. The next ground is that the certificate given by the Tahsildar Thiruvidaimarudur gives only an approximate value and not the actual market value.

It is no doubt true that the Tahsildar Thiruvidamarudur has stated that the immovable property of the debtor is worth about Rs.38,000. Even

though the Tahsildar has stated that market value of the property would be about Rs.38,000 even taking it as an approximate value it is definitely

far above Rs. 25,000. Therefore, the appellate authority should have accepted the certificate given by the Tahsildar. Thiruvidaimarudur showing

the worth of the immovable property owned by the debtor as more than Rs.25,000 and held that he is not entitled to the benefits of the Act.

4. Though on this ground the order of the appellate authority has to be set aside, we have to set aside both the orders of the initial authority and the

appellate authority as they have no jurisdiction to pass the orders in question. As already stated, the debt in respect of which the debtor claims

benefits under the Act is a promissory note debt and in respect of such debts neither S. 5 nor S. 6 of the Act applies and only Sec. 4 will stand

attracted Under S. 4 the Tahsildar is not empowered to give a certificate of discharge and it is only civil court wherein the money claim is sought to

be enforced by the creditor the debtor can put forward his defence that he is entitled to the benefit of the Act and the civil court will have to

naturally consider the question as to whether the debtor is entitled to the benefits for the act. We have held in a series of cases that in respect of

mere money claims by the creditors the Tahsildar is not empowered to give a certificate of discharge and in those cases the question whether the

debtor is entitled to the benefits of the Act has to be agitated before and adjudicated upon by the civil court in which the money claim is sought to

be enforced by the creditor. In this case the petitioner is said to have files a suit and obtained a decree. If that is the factual position, then it is only

at the stage of execution the debtor can file an application claiming the benefits of the Act and in that event the civil court will have go into the

question as to whether the debtor is entitled to the benefits of the Act and give relief if he is so entitled. Even if the suit is pending the debtor can

seek an adjudication on the question as to whether he is entitled to the benefits of the provisions of the Act and if he proves entitlement the civil

court will have to give relief as provided in the Act.

5. Subject to the observations made above the order of the first respondent is set aside and the writ petition is allowed. There will be no order as

to costs.

6. Petition allowed.