

(1976) 07 MAD CK 0004
In the Madras High Court

Swamiappa Goundar and Others

APPELLANT

Vs

Vettakaranpudur Mahajana Bank Ltd. and Another

RESPONDENT

Date of Decision : 01-07-1976

Acts Referred:

Citation : (1979) 92 LW 11 : (1978) 1 MLJ 54

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—This Letters Patent Appeal arises out of the judgment of Kailasam, J., as he then was, rendered in Second Appeal No.

377 of 1962. The first respondent herein filed a suit on two mortgages for recovery of a sum of Rs. 4,586-6-8. The mortgages sued upon were :

(i) Exhibit A-1, dated 30th December, 1942 for Rs. 4,000 executed by the defendants in favour of the plaintiff agreeing to pay interest at 6 per

cent per annum payable half yearly and the default interest at 9per cent, if the principal amount was not repaid within a period of two years; and (ii)

Exhibit A-2, dated 23rd May, 1945 for Rs. 2,400 payable with interest at 9-3/8. per cent. re-payable in one year and in case of default in

repayment default interest at 22½ per cent, is chargeable. The defendants who are the appellants herein had paid various amounts and those

amounts have been adjusted by the plaintiff towards interest at the contract rate. On 24th October, 1956, the defendants issued a lawyer's notice

to the plaintiff bank calling upon the bank to re-open the accounts and adjust the interest paid towards the mortgage debt calculating interest at the

rate provided by Section 13 of Act IV of 1938 as amended from time to time. Along with the said notice, the defendants enclosed a cheque for

Rs. 3,403 which according to them was sufficient to discharge the entire mortgage debt. The plaintiff bank accepted the said payment but disputed

the defendant's claim that the earlier appropriation of the amounts paid towards interest can be reopened. Thereafter the plaintiff bank filed O.S.

No. 48 of 1959 on the file of the Court of District Munsif, Udumalpet, for recovery of the balance of the amount said to be still due. In the said

suit, the defendants contended that all the payments made earlier should be reappropriated towards principal and interest on the basis of the

statutory rate of interest and that the balance of the amount due on the mortgages if any arrived at after calculating interest at the said rate will alone

be payable. The trial Court rejected the case of the defendants and decreed the suit. But the lower appellate Court however, upheld the contention

put forward by the defendants that they were entitled to call upon the plaintiff bank to make a reappropriation of the amounts paid after calculating

interest at the rate provided in Section 13. Aggrieved against the said decision of the lower appellate Court, the plaintiff came to this Court by way

of second appeal.

2. In the second appeal it was contended on behalf of the plaintiff bank that the view taken by the lower appellate Court was contrary to the Full

Bench decision of this Court in Chellammal Vs. Abdul Gaffoor Sahib and Another, , and that the said Full Bench decision was a clear authority for

the proposition that where a debtor has in fact paid the interest at the contract rate which has been appropriated by the creditor towards interest he

cannot have the transaction reopened by calling upon the creditor to reappropriate the amounts paid and appropriated in a different manner. The

defendants however, contended that in view of the Full Bench decision of the Andhra Pradesh High Court in Nainamul v. B. Subba Rao (1957) 2

An.W.R. 53 : AIR 1957 A.P. 546, which has been approved by the Supreme Court in Chellammal Vs. Abdul Gaffoor Sahib and Another, the

view taken by the Full Bench in Chellammal v. Abdul Gaffoor Sahib (1957) 2 An.W.R. 53 : AIR 1957 A.P. 546, cannot be taken to be correct

any longer, Kailasam, J., as he then Was, who heard the second appeal has taken the view that the Supreme Court in Chellammal Vs. Abdul

Gaffoor Sahib and Another, , was dealing with a case of a debt which was incurred before Madras Act IV of 1938 came into force while the case

covered by the Full Bench decision of this Court in Chellammal v. Abdul Gaffoor Sahib (1957) 2 An.W.R. 53 : AIR 1957 A.P. 546, related to a

debt which was incurred after the Act came into force that therefore, the Supreme Court cannot be taken to have doubted the correctness of the

said Full Bench decision of this Court and that the Full Bench ruling is not in the least affected by the decision of the Supreme Court. In that view,

the learned Judge allowed the second appeal, following the Full Bench decision in Chellammal v. Abdul Gaffoor Sahib (1957) 2 An.W.R. 53 :

AIR 1957 A.P. 546.

3 In the Letters Patent Appeal, the appellants reiterate practically the same contentions that were urged before the learned single Judge. It is said

that after the decision of the Supreme Court in Gamini Krishnayya and Others Vs. Curza Seshachalam and Others, , which refers with approval

the observations of Subba Rao, C.J., as he then was in Nainamul v. B.Subba Rao (1957) 2 An.W.R. 53 : AIR 1957 A.P. 546, the foundation of

the decision of the Full Bench in Chellammal Vs. Abdul Gaffoor Sahib and Another, , had been shaken, and that having regard to the fact that the

Supreme Court has approved the observations of Subba Rao, C.J., in the decision in Nainamul v. B. Subba Rao, which has been specifically

dissented by the Madras Full Bench in Chellammal Vs. Abdul Gaffoor Sahib and Another, , the Madras decision should be taken to have been

overruled by the Supreme Court. We are not inclined to agree with the said contention of the learned Counsel. Firstly the Supreme Court in

Gamini Krishnayya and Others Vs. Curza Seshachalam and Others, , was dealing with a case relating to a debt incurred before the

commencement of Madras Act IV of 1938 which is covered by Sections 8 and 9 and therefore, their Lordships of the Supreme Court were

concerned only with the scope and ambit of Sections 8 and 9. There was no occasion for the Supreme Court to consider the scope and ambit of

Section 13 which directly arose for consideration both in the Madras Full Bench case and the Andhra Pradesh Full Bench case. It is true that the

Supreme Court has referred to certain observations of Subba Rao, C.J., in the Andhra Pradesh Full Bench case. But the reference to those

observations with approval by the Supreme Court cannot be taken to be approval of the decision as correct. As a matter of fact, the decision of

the Full Bench in Chellammal Vs. Abdul Gaffoor Sahib and Another, , has also been referred to by the Supreme Court in the said decision and

distinguished on the ground that it was a decision rendered u/s 13. This clearly shows that the Supreme Court was not considering the correctness

or otherwise of the decisions of either the Andhra Pradesh Full Bench decision or of the Madras Full Bench decision. Though the Supreme Court

has referred to both the Full Bench decisions, it has not gone into the question as to which of them is correct. It is not therefore possible for us to

say that the Supreme court has approved the decision of the Andhra Full Bench and overruled the Madras Full Bench decision.

4. The learned Counsel for the appellants then contends that as between the two differing views expressed in the Andhra Pradesh Full Bench

decision in Nainamul v. Subba Rao (1957) 2 An.W.R. 53 : AIR 1957 A.P. and the Full Bench decision of this Court in Chellammal Vs. Abdul

Gaffoor Sahib and Another, , the view expressed in the former case is preferable as being consistent with the object and the purpose of Madras

Act IV of 1938 Though much can be said in favour of the view taken by the Full Bench of the Andhra Pradesh High Court in Nainamul v. B.

Subba Rao (1957) 2 An.W.R. 53 : AIR 1957 A.P., we are bound by the Full Bench decision of this Court in Chellammal Vs. Abdul Gaffoor

Sahib and Another, , which directly deals with the point in question. We have to therefore, follow the decision of the Full Bench in Chellammal Vs.

Abdul Gaffoor Sahib and Another, Andhra Pradesh High Court in Nainamul v. B. Subba Rao (1957) 2 An.W.R. 53 : AIR 1957 A.P. Andhra

Pradesh.

5. The result is, the Letters Patent Appeal fails and it is dismissed. There will be no order as to costs.