
(1939) 07 MAD CK 0005
In the Madras High Court

Swaminatha Odayar

APPELLANT

Vs

Srinivasa Aiyar and Others

RESPONDENT

Date of Decision : 19-07-1939

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1939 Mad 942 : (1939) 50 LW 411 : (1939) 2 MLJ 495

Hon'ble Judges : Burn, J

Bench : Division Bench

Judgement

Burn, J.—This appeal and this revision petition are both preferred from the order of the learned Subordinate Judge of Tiruvarur passed on

E.A. No. 188 of 1938 in O.S. No. 30 of 1924 on the file of the Tanjore Sub-Court. The application was made to the learned Subordinate Judge

by the appellant, who was the second defendant in the suit, u/s 20 of Madras Act IV of 1938, for stay of execution of the decree. Section 20 of

Madras Act IV of 1938 says that:

Every Court executing a decree passed against a person entitled to the ! benefits of this Act shall, on application, stay the proceedings until the

Court which passed the decree has passed orders on an application made or to be made u/s 19.

2. Section 19 provides for an application by a judgment-debtor who is an agriculturist to the Court which passed the decree for scaling down the

decree. The learned Subordinate Judge has held an inquiry in order to ascertain whether the second defendant who made the application u/s 20

was ""a person entitled to the benefits of this Act"" and after taking evidence on the point he has decided this question unfavourably to the second

defendant. He therefore dismissed the application to stay the proceedings. The second defendant has appealed from this decision and has also put in a revision petition.

3. With regard to the appeal, we are clearly of opinion that no appeal lies in this case. The question which is raised in an application u/s 20 of

Madras Act IV of 1938, according to Mr. Venkatachari who appears for the appellant, must be considered to be a question u/s 47 of the Civil

Procedure Code, since it relates to stay of execution, and there are many decisions that questions regarding stay of execution are questions

regarding execution. We find ourselves unable to accept this view. The question raised u/s 20 is, we think, not a question between the parties to

the decree at all. As we have already indicated, Section 19 of Madras Act IV of 1938 provides for the application of the judgment-debtor for the

scaling down of the decree and Section 20 we consider to be a provision merely ancillary to Section 19. It was intended, we think, to make it

possible for the judgment-debtor against whom execution was proceeding in a Court different from that which passed the decree to get the

execution proceedings stayed until the Court which passed the decree could decide upon his application u/s 19. We see no reason to differ from

our learned brother Wadsworth, J., who held in his decision of C.R.P. No. 1520 of 1938 that the Court to which an application is made u/s 20

must decide whether the person making the application is a person entitled to the benefits of the Act or not. But we think that the inquiry

contemplated by Section 20 is an inquiry of a summary kind and that all that is necessary is that the applicant should show the Court that prima

facie he is entitled to the benefits of the Act. A reading of Section 20 by itself seems to us to indicate clearly that the only question which arises

under that section is a question between the executing Court and the applicant and not a question between the parties to the decree. In our view a

Court to which an application is made u/s 20 is perfectly competent to stay the execution proceedings without notice to the decree-holder, if it is

satisfied prima facie that the applicant is a person entitled to the benefits of the Act. This is indicated by the existence of the proviso to Section 20

which is that, if the judgment-debtor does not make an application u/s 19 within sixty days or if his application is made and rejected, the Court

proceeds with the execution of the decree. We cannot therefore agree that the order passed in this case is an appealable order u/s 47 of the CPC

and A.A.O. No. 6 of 1939 must accordingly be dismissed with costs.

4. In considering the Civil Revision Petition we think that the order of the learned Subordinate Judge cannot be upheld. It is not possible to say that

he had no jurisdiction to decide whether the applicant was entitled to the benefits of the Act, for, as we have already said, we think that Section 20

does give him such jurisdiction. But his decision we think in this case must be set aside because he has given a perverse meaning to the words of

Section 3, proviso C. It was shown beyond the possibility of dispute that the petitioner had not within the two years immediately preceding 1st

October, 1937, been assessed to property or house tax under the Madras District Municipalities Act on property of the annual rental value of not

less than Rs. 600. It was shown that he was assessed to property tax on property of the annual value of Rs. 405 in Mannargudi Municipality, and

it was also shown that he was in reality the owner of property in Tiruvarur Municipality of the annual value of Rs. 240. But he was never assessed

to property tax on the property in Tiruvarur. The assessment on that property stands, as it has stood apparently for the last 40 years, in the name

of another person Balasubramanya Udayar, who apparently died long ago. Learned Counsel for the respondent contends - and we think with

good reason--that the policy of the Act was to prevent persons owning property of the annual rental value of Rs. 600 and more from claiming the

benefits of Madras Act IV of 1938. But the proviso to Section 3, as we have already said, excludes from the benefits of the Act only persons who

have been assessed to property tax. It does not exclude those who, though liable to property tax, have for some reason or other escaped

assessment. The learned Subordinate Judge says:

In my opinion, the words "assessed to" means only "taxed in respect of and not that the person"s name should actually be found in the assessment

register.

5. This, as we have said, is clearly perverse. A person cannot be ""assessed"" unless the assessment is made in his name.

6. In this case the petitioner was prima facie a person entitled to the benefits of the Act and we therefore set aside the order of the learned

Subordinate Judge and direct that the execution proceedings be stayed u/s 20 of Act IV of 1938. It will be for the petitioner to make an application u/s 19 and if no application is made within sixty days or if the application is made and dismissed, the executing Court will proceed (under the proviso to Section 20) with the execution. The petitioner will recover from the respondents (decree-holders) the costs of this revision petition.