
(1942) 01 MAD CK 0011
In the Madras High Court

Swayamprabhai Ammal and Others

APPELLANT

Vs

D. Muthukrishna Padayachi

RESPONDENT

Date of Decision : 21-01-1942

Acts Referred:

Citation : AIR 1942 Mad 362 : (1942) ILR (Mad) 647 : (1942) 55 LW 136 :
(1942) 1 MLJ 303

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This civil revision petition raises the question whether Rule 2 of the rules framed under G.O. No. 2634 (Development),

dated 27th October, 1939, in exercise of the powers u/s 28 (1) and Section 28 (2) (b) and (c) of Madras Act IV of 1938 is ultra vires. The rule in

question prescribes a procedure whereby when any debt other than a decree debt is due by an alleged agriculturist, either the debtor or the

creditor may apply to the Court for a declaration as to the amount of the debt and it is provided that no such application shall be maintainable if any

suit for the recovery of the debt be pending and further that if while an application is pending a suit is filed for the debt, the application shall be

dismissed. R. 9 of the same rules gives a right of appeal and second appeal from any declaration under these rules.

2. We are concerned in the present case with an application by the son of a mortgagor for a declaration that the mortgage debt is discharged by

reason of previous payments, applying the principles laid down in the Act. The lower Court dealt with the contention that the rules under which the

application was made are ultra vires, by a preliminary finding against which the present revision is preferred. The respondent does not object to the

decision of this question at this stage, though ordinarily this Court will not entertain a revision against a mere finding, unless there are special circumstances rendering it desirable. It is, conceded on both sides that it is most desirable to get an authoritative ruling on this point not only for the decision of the particular case, but for the guidance, of the lower Courts in other similar cases which are likely to occur.

3. Act IV of 1938, is intended to provide for the relief of indebted agriculturists, and in Section 7, the basic principle is laid down that

notwithstanding any law, custom, contract or decree of Court to the contrary all debts payable by an agriculturist at the commencement of the Act

shall be scaled down in accordance with its provisions and that no sum in excess of the amount so scaled down shall be recoverable from the

debtor. Section 18 indicates clearly that it is the duty of the creditor after this Act came into force or even after the bill came under the discussion

of the Legislature, to calculate his claim in accordance with the provisions of the Act on pain of being mulcted in costs. It is, however, in many

cases a matter of considerable difficulty for either the creditor or the debtor to discover with any certainty what will be the effect of applying the

provisions of the Act to a particular contract; and this was more especially so at the time when the present rules were promulgated which was

before a long series of reported decisions had cleared many doubtful questions. It cannot be denied that in October, 1939, many creditors must

have found it extremely difficult even with the help of competent legal advice to decide what was the amount which they could justly claim, having

regard to the provisions of this Act.

4. Section 28 of the Act gives to the Provincial Government the power to make rules for carrying into effect the purposes of the Act and

particularly to prescribe the form of applications under the Act and to remove any difficulty in giving effect to the provisions of the Act. Having

regard to the difficulty just referred to, the Local Government in the rules now under consideration have laid down a procedure whereby either a

creditor or a debtor can apply to the Court for a declaration of the amount of the debt affected by the Act. The rules provide for a very small

court-fee and "limit the enquiry to the question of what is the amount of such debt. It is contended that these rules particularly Rule 2, with which

we are now concerned are ultra vires. It is suggested that Rule 2, is not a rule for one of the purposes contemplated u/s 28. For the reasons

already adumbrated, it will be apparent that at the time when these rules were promulgated there was a very widespread difficulty in giving effect to

the provisions of the Act, at any rate without involving the parties in unnecessary expense and hardship. It is also suggested that this rule is

inconsistent with the provisions of the Act. But we have not been shown how it is so inconsistent. The whole purpose of the rule is to work out the

provisions of the Act in an inexpensive and expeditious manner.

5. The main contention against the rule has been based on the theory that it violates general principles of law and particularly that it is inconsistent

with the principles underlying Order 2, Rule 2 of the CPC and Section 42 of the Specific Relief Act. It is difficult to see how Order 2, Rule 2, can

be read as laying down any basic principle of law which must govern the formulation of rules of procedure under a statute. No doubt it is the law

that when a man files a suit based on a particular cause of action, he must ask for all the reliefs which he can obtain with reference to the cause of

action. But the procedure now under consideration is not a procedure intended to give to either party the power to enforce his rights on a

particular cause of action. The right of suit is left intact and if a suit intervenes while the application is pending, the procedure under the rule comes

to an immediate stop. All that this procedure under the rules purports to secure is an opportunity for parties to a contract to get an inexpensive,

speedy and authoritative decision as to the extent to which the contract is modified by this rather drastic legislation. The procedure is in fact

intended to benefit those parties who do not want to file a suit but have difficulty in ascertaining how the new statute affects the pre-existing

contract. We do not see how any basic principle embodied in Order 2, Rule 2 is offended by the rule; nor can we see how this rule is bad by

reason of the provisions of Section 42 of the Specific Relief Act. Section 42 of the Specific Relief Act relates only to suits and not to applications.

According to the view held by this Court (vide K.P. Ramakrishna Patter Vs. K.P. Narayana Patter and Another, , is not exhaustive even of

declaratory suits and it certainly contains nothing to indicate that no kind of application can lie for a mere declaration, if the law otherwise provides

for such an application. Without going into detail we may remark that there are many instances of special statutory provisions for pure declarations

which do not come within the four corners of Section 42 and we can see no reason why this rule providing for the ascertainment by the Court in an

appropriate judicial proceeding of the effect on a particular debt of the provisions of the new Act and the declaration of the result should be

deemed invalid by reason of the provisions of Section 42 of the Specific Relief Act.

6. The further contention is that the rules provide for a right of appeal and second appeal, that this provision is invalid and that if it is invalid the

whole of the rules must be deemed to be bad. We understand that the question of the validity of Rule 9 which gives the right of appeal is shortly to

come before this Bench in a case in which it is directly in issue. It is not therefore desirable for us to express an opinion on this question. But even

conceding that the rule providing for an appeal can be successfully attacked, we do not consider that the invalidity of that rule would carry the

consequence that the whole of the body of rules would have to be deemed invalid. The provision for a right of appeal is quite separate from the

provisions giving the machinery for the ascertainment of the amount of the debt by the Court of first instance, It is not a case in which the rule,

alleged to be invalid is so inextricably mixed with the rest of the rules that a declaration of its invalidity would necessarily destroy the whole fabric of

the rules. Even taking away this right of appeal there remains a complete and effective procedure for the rapid and inexpensive determination of the

effect of the Act upon a particular debt and even without an appeal the procedure would be subject to the control of this Court in revision just as

the procedure under Sections 19 and 20 of the Act has also been held to be subject only to control in revision. We do not think that any challenge

to the validity of Rule 9 is sufficient to throw a doubt as to the validity of the main body of these rules.

7. Lastly, it is suggested that Rule 2 is bad because it offends against the general principles governing suits upon mortgages as embodied in Order

34 of the Civil Procedure Code. It is pointed out that the rule provides only for notice to the opposite party and does not contain any provisions

regarding the impleading of all persons interested in the mortgage security, settlement of priorities and so on. It must, however, be remembered that

the only thing which can be done under these rules is to declare the amount of the debt. If for the purpose of determining the amount of the debt, it is necessary to determine the indebtedness of other persons interested in the contract, no doubt the Court would give notice to those persons and go into their rights to the extent necessary to decide the only matter in issue. Possibly there may be cases in which the determination of the amount of the debt may involve questions of considerable difficulty and enquiries of some elaboration. But that is not a reason for holding the procedure to be invalid, more especially as the parties can at any time put an end to the proceeding by filing a suit wherein all the rights connected with the contract can be elaborately worked out.

8. We are therefore of opinion that for none of the reasons urged before us, can it be properly said that Rule 2 is ultra vires. We therefore dismiss the petition with costs.

9. We must decline to give a certificate u/s 205 of the Government of India Act.