

(1941) 08 MAD CK 0065
In the Madras High Court

The Nagore Durga and Another

APPELLANT

Vs

Chatram Manager Kannu Pillai

RESPONDENT

Date of Decision : 14-08-1941

Acts Referred:

Citation : AIR 1942 Mad 79 : (1941) 54 LW 433 : (1941) 2 MLJ 604

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The only question in this second appeal is whether Section 17 of Madras Act IV of 1938 saves limitation in respect of a suit for arrears of rent for fasli 1344 due from a non-agriculturist. The arrears in question accrued due on the 1st July, 1935, the suit was filed on the 1st December, 1938, and would clearly be barred by limitation unless the plaintiffs-appellants here are entitled to the benefit of Section 17 of the Act. Section 17 says:

Notwithstanding anything contained in the Madras Estates Land Act, 1908, or the Malabar Tenancy Act, 1929, or in any law of limitation or procedure in force for the time being, no suit or execution proceedings in respect of arrears of rent accrued for fasli 1345 or any prior fasli which, under the existing law, would become barred between the 1st October, 1937 and the 30th September, 1938, shall be so barred and the landholder...shall be entitled to file a suit or institute execution proceedings for recovery thereof, on or before the 31st December, 1938....

2. Then follows a provision extending the period for filing suits in cases where the rent for fasli 1347 has been paid within the time stipulated and the section concludes with a proviso covering cases in which applications under Sub-section 4 of Section 15 are pending on the 31st December, 1938, or the 31st December, 1939, as the case may be, extending the period of limitation to two months from the date of the order on such applications. Now the plain language of this section covers any suit in respect of arrears of rent accrued for fasli 1345 or any prior fasli and it is not restricted to such a suit filed against an agriculturist.

3. In Act IV of 1938 there are various sections dealing with decrees which are affected by the procedure under the Act. Section 18 deals expressly with a decree passed against an agriculturist. Section 19 deals with a decree for the repayment of a debt which has to be scaled down on the application of an agriculturist judgment-debtor. But this section certainly applies to a decree which is passed against both agriculturists and non-agriculturists, though the relief may be confined only to the former. Section 20 expressly applies only to a decree passed against an agriculturist. Sections 22 and 23 dealing with sales are not confined to decrees against agriculturists, but their operation is confined to cases in which the properties of agriculturists have been sold. It will thus appear that under the scheme of the Act the Legislature has distinguished between those judicial proceedings which are only against agriculturists and those judicial proceedings not necessarily taken against agriculturists solely but which affect the economic position of agriculturists. Having regard to the distinction so made it is at least arguable that the use of general language in Section 17 was not accidental and that the fact that this section comes within an Act intended to benefit agriculturists and is closely connected with another section intended to benefit agriculturist tenants, is not of itself a sufficient warranty for restricting the scope of the section to suits" against agriculturists. Moreover the proviso to the section which imports the consideration of Sub-section 4 of Section 15 may itself come into effect where a non-agriculturist has instituted proceedings. Suppose a non-agriculturist made a deposit under Sub-section 4 of Section 15 claiming to be an agriculturist and claiming the benefits of that clause and his claim is resisted (as we understand happened in the present case) it would be difficult to deny to the landholder the benefits of the proviso to Section 17 merely because the contest on the application u/s 15 (4) ultimately ended in a decision that the applicant is not an agriculturist. The object of Section 17 is clearly to save the landholders from the necessity of filing large numbers of suits which would be met by payments u/s 15 and a claim for the cancellation of the earlier arrears. The landholders are permitted to stay their hands in order to give the tenants an opportunity of taking advantage of the provisions of Section 15 so that unnecessary litigation may be avoided. In large estates there will be a very obvious difficulty in ascertaining which of the many thousands of defaulters are entitled to the benefits of the Act and it is not unreasonable to suppose that the Legislature intended to discourage unnecessary litigation by allowing the landholders an extended period of limitation for all suits in respect of arrears of rent which are likely to be affected by the new statutory provisions without imposing upon the landholder the necessity of ascertaining positively in every case whether the defaulter would or would not be entitled to the benefits of the Act.

4. We have therefore a section the plain words of which would include suits against all defaulting tenants, agriculturists or non-agriculturists, and the section read in its plain terms does not appear to run contrary to the general object of the Act. Nor is this interpretation of it unreasonable or improbable. In such

circumstances there seems to be no justification for adding to this section words which would restrict its scope beyond the actual terms of the section. We are therefore of opinion that the appellant in this case was entitled to the benefit of Section 17 to save limitation in respect of arrears of rent for fasli 1344.

5. We allow the second appeal with costs and remand the suit to the trial Court for ascertainment of the amount due for fasli 1344 and for passing a decree in accordance with the finding. Court-fee paid on the Memorandum of second appeal will be refunded.