

(1942) 08 MAD CK 0044
In the Madras High Court

Tripasuru Venkata Narasinga Rao

APPELLANT

Vs

Vysyaraju Surayya Raju and Others

RESPONDENT

Date of Decision : 10-08-1942

Acts Referred:

Citation : AIR 1943 Mad 91 : (1943) ILR (Mad) 370 : (1942) 55 LW 648

Hon'ble Judges : Patanjali Sastri, J

Bench : Full Bench

Judgement

Patanjali Sastri, J.—This is an appeal from a judgment and decree passed by the Court of the Subordinate Judge of Chicacole in a suit brought by the appellant to redeem a mortgage executed by him and his sons in favour of respondent 1 (hereinafter referred to as the respondent). The appellant's sons were impleaded in the suit as defendants 2 to 4 of whom defendant 4 died soon after the suit was instituted and the surviving sons are respondents 2 and 3 to this appeal. The mortgage was executed on 27th March 1929 at Berhampore in Ganjam District then part of the Madras Presidency, and it provides for the repayment of the principal sum of Rs. 26,000 with compound interest at fourteen annas per cent, per month with yearly rests. The mortgage money was charged on immovable properties situated partly in Vizagapatani District and partly on Ganjam District. The appellant's main contention in the Court below, and only contention in this appeal, was that he and his sons were agriculturists within the meaning of the term as defined in the Madras Agriculturists' Relief Act, 1938, and that therefore the mortgage debt was liable to be scaled down in accordance with the provisions thereof. The respondent contested this claim on the ground that the appellant was disqualified, under proviso D to Section 3 (ii) from claiming the benefits of the Act as an agriculturist and that even otherwise, the Act which was passed by the Provincial Legislature could not affect the suit mortgage as the loan was advanced and the bond was executed at Berhampore outside the province of Madras and part of the properties mortgaged were also situated outside the province. The learned Subordinate Judge held that the appellant was not disqualified under the proviso, but as part of the mortgaged properties were

situated outside the province and the mortgage was indivisible, the Act did not affect the respondent's rights under the mortgage and that the debt could not therefore be scaled down under its provisions. He passed a decree accordingly declaring that the respondent was entitled to the full amount due under the mortgage deed, viz., Rs. 26,000 for principal and Rs. 53,760-7-3 for interest.

2. In order to appreciate the contentions of the parties it is necessary to state a few facts. Before the Government of India Act, 1935, was passed, the District of Ganjam was part of the presidency of Madras. As provided in Section 289 (1)(b) of that Act, the new province of Orissa was constituted by the Government of India (Constitution of Orissa) Order, 1936, and certain areas were transferred from the presidency of Madras to the new province thus constituted. Among such areas were Berhampore and Aska taluks of the Ganjam District wherein some of the mortgaged properties, viz., the Kumari estate and the house at Berhampore are situate. The other item comprised in the mortgage, viz., the Tarlapeda Estate, Tek-kali Taluk, is situate in the District of Vizagapatam in the presidency of Madras. The appellant pays a sum of Rs. 255-8-0 to the Government of Madras as peshkush for the Tarlapeda Estate and about Rs. 2308 to the Government of Orissa in respect of the Kumari and other estates which he owns in that province. These facts are not in dispute. Now the definition of an "agriculturist" so far as it is material here, runs thus:

Section 3 In this Act, unless there is anything repugnant in the subject or context,....

(ii) "agriculturist" means a person who (a) has a saleable interest in any agricultural or horticultural land in the province of Madras, not being land situated within a municipality or cantonment which is assessed by the Provincial Government to land revenue (which shall be deemed to include peshkush and quit rent) or which is held free of tax under a grant made, confirmed or recognised by Government... provided that a person, shall not be deemed to be an "agriculturist" if he....

(D) is a landholder of an estate under the Madras Estates Land Act, 1908, or of a share or portion thereof in respect of which estate, share or portion any sum exceeding Rs. 500 is paid as peshkush or any sum exceeding Rs. 100 is paid as quit rent, jodi kattubadi, poruppu or the like, or is a jenmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government.

3. It was suggested for the appellant that the words "to the Provincial Government" at the end of the proviso qualify not only the word "pays" in the last sentence but also the words "is paid" in the earlier part of the proviso, so that the payment of the peshkush in excess of the specified limit must, in order to disqualify the payer under the proviso, be to the Provincial Government, and that, therefore, the appellant who does not pay more than Rs. 255-8-0 as peshkush to the Provincial Government of Madras for the Tarlapeda estate which

is the only estate he owns in this province does not come within the mischief of the proviso. This argument has found favour with the learned Subordinate Judge, but we find it impossible as a matter of grammatical construction to read the last four words as qualifying the payment of peshkush referred to in the earlier part of the proviso which must, therefore, be taken to exclude from the definition a person who pays any sum exceeding Rs. 500 as pesh. kush to the Provincial Government or to any other Government provided, of course, such peshkush is paid in respect of "an estate under Madras Estates Land Act" or of a share or portion thereof. We see no force in the suggestion that the Legislature is not likely to have intended to make ownership of property outside the province a ground of disqualification, as we find that in provisos A, B and C assessment to Income Tax and property tax even outside the province is expressly stated to be a ground of disqualification. The fact is that while the definition makes the ownership of certain kinds of property in this province the basis of agriculturist status, the disqualifying circumstances mentioned in the provisos would appear to have reference to the general financial position of the individual. In this view the appellant would be disqualified under the proviso as he admittedly pays over Rs. 2500 as peshkush to the Provincial Governments of Madras and Orissa in respect of the estates held by him in the two provinces, unless it can be said that the estates for which he pays peshkush to the Orissa Government are not estates "under the Madras Estates Land Act, 1908." Accordingly, arguments on this part of the case centred round the question whether the appellant was or was not "a landholder of an estate under the Madras Estates Land Act, 1908" in respect of the estates owned by him in the Province of Orissa.

4. It is not disputed that these estates are "estates" and that the appellant is a "land-holder" as these terms are defined in the Madras Estates Land Act, 1908, which in fact applied to these estates when they formed part of the Madras Presidency. And it is also admitted that, as a matter of fact, the provisions of the Act continue to operate in the areas transferred to the Province of Orissa. But it was submitted by Mr. Sitarama Rao for the appellant that this was the result of the Orissa Laws Regulation 1936, made by the Governor-General in Council "to declare the law in force in the Province of Orissa." In other words, the contention was that the Madras Estates Land Act, 1908, does not apply *proprio vigore* to "estates" in Orissa but only by virtue of the legislation of a competent authority making the provisions of the Act applicable to such estates, which cannot therefore be said to be estates under the Act. On the other hand, it was contended by the learned Advocate-General for the respondent that when the new Province of Orissa was constituted, the territorial application of all enactments then in force in the transferred areas was preserved in tact by the express provisions of Section 26, Government of India (Constitution of Orissa) Order, 1936, read with Section 289 (2)(c), Government of India Act, and that, therefore, the appellant's estates which now form part of the Province of Orissa continue to be none the less "estates under the Madras Estates Land Act, 1908."

5. On an examination of All the relevant provisions to which our attention was

called, we are of opinion that the respondent's contention is correct and must prevail. Section 289, Government of India Act, 1936, having provided for the formation of the Province of Orissa by an Order in Council which may also contain provisions with respect to the laws which are to be in force in the new province or any part thereof, the Government of India (Constitution of Orissa) Order, 1936, was passed defining the areas of which the new province shall consist and providing that those areas shall cease to form part of the provinces from which they were separated (Section 3). Accordingly certain parts of the Ganjam District which were included in Orissa no longer formed part of the Madras Presidency and the Madras Estates Land Act which extended only to that Presidency could have no operation in the areas transferred to Orissa. But Section 26 of the same Order in Council overrides this consequence of Section 3 by providing that:

The provisions of this Order shall not be deemed to have effected any change in the territorial application of any enactment, notwithstanding that that enactment is expressed to apply or extend to the territories for the time being under a particular administration:

Provided that nothing in this paragraph shall be construed as affecting the power to make regulations for Orissa u/s 71, Government of India Act, as applied by this Order.

6. The effect of this provision is, as it seems to us, that the Madras Estates Land Act is to continue in force in the areas transferred to the Province of Orissa notwithstanding that the Act was expressed to apply only to the Presidency of Madras which of course no longer includes such areas. In other words, the Madras Estates Land Act, 1908, operates *proprio vigore* in the transferred territory as before unaffected by the transfer, and not by reason of its provisions having been reenacted by the Legislature or other competent authority of the Province of Orissa. Mr. Sitarama Rao however drew attention to the proviso to Section 26 and to Section 7, Orissa Laws Regulation, 1936, made by the Governor-General in Council u/s 71, Government of India Act, and argued that the effect of Section 7 of that regulation was to displace the operation of Section 26 of the Order in Council referred to above and to re-enact the provisions contained in the Madras Estates Land Act for the areas transferred from the Madras Presidency, so that the Madras Estates Land Act is not as such in force in those areas. We are unable to accede to this argument. Section 7 of the Regulation runs thus:

Subject to the provisions of paras. 16 and 17, Government of India (Constitution of Orissa) Order, 1936, all enactments other than enactments repealed by this regulation made by any authority in British India and all notifications, orders, schemes, rules, forms and bye-laws issued, made or prescribed under such enactments, which were immediately before 1st April 1936 in force in any of the areas comprised in the Province of Orissa shall, in their application to such areas, be construed as if references therein by whatever form of words to the

authorities territory or gazettes mentioned in col. 1 of Schedule 1 were references to the authorities, territory, or gazettes respectively mentioned or referred to opposite thereto in col. 2 of the said schedule.

7. And Item 3 (a) of Schedule 1 which is headed "Construction of Enactments" mentions in col. 1 the Presidency of Madras and opposite there to in col. 2 the areas separated from the Presidency of Madras and forming part of the Province of Orissa. Section 7 read with Schedule 1 thus provides a rule of construction according to which the term "Presidency of Madras" in Section 1, Madras Estates Land Act, should be construed as referring to the areas separated from the Presidency of Madras and forming part of the Province of Orissa. The language used clearly indicates that the enactments for the construction of which the section makes certain provisions are otherwise already in operation in the transferred areas. All that the section does is to say how certain expressions used in these enactments have to be understood in their application to such areas. Far from displacing the operation of Section 26, Government of India (Constitution of Orissa) Order, 1936, Section 7 of the regulation proceeds on the basis that the former provision preserved as in tact the territorial application of the enactments theretofore in force in the transferred areas and gives further effect to it by providing a rule of construction for such enactments. No doubt the application of the Madras Estates Land Act to the transferred areas might as well have been secured by the Act being repealed and its provisions being re-enacted either by the Governor-General in Council during the transitional period or by the Provincial Legislature thereafter as the operation of Section 26 is made expressly subject to the legislative powers of those authorities by the proviso to that section in the one ease and by Section 289(2)(c), Government of India Act, 1935, in the other; but this method was not adopted, and Section 26 which, it may be noted, is not one of the provisions in respect of the transitional period, has apparently been left in full force, with the result that enactments previously applicable to the transferred areas continue to operate unaffected by the transfer.

8. The point is a somewhat narrow one, but on a consideration of the language used in Section 26, Government of India (Constitution of Orissa) Order, and in Section 7 of the Orissa Laws Regulation, we are inclined to hold that the Madras Estates Land Act continues to operate as before in the areas transferred from the Presidency of Madras to the Orissa Province and not by virtue of any fresh legislation by a competent authority of the latter administration. It follows that the appellant must be regarded as being "a landholder of an estate under the Madras Estates Land Act, 1908," within the meaning of proviso D to Section 3 (ii), Madras Agriculturists' Relief Act, even with reference to the estates owned by him in the Province of Orissa, and as he admittedly pays more than Rs. 500 as peshkush in respect of such estates he is disqualified under the proviso from claiming the benefits of that Act as an agriculturist. In this view it has become unnecessary to consider the other contentions raised by the parties. In the result the decree of the Court below is confirmed though on different grounds, and the appeal is dismissed with costs. A certificate is granted u/s 205, Government of

India Act, that this case involves a substantial question of law as to the interpretation of an Order in Council under the Government of India Act.