

(1942) 07 MAD CK 0081
In the Madras High Court

Vijiyalakshmi Ammal

APPELLANT

Vs

Rangachariar

RESPONDENT

Date of Decision : 13-07-1942

Acts Referred:

Citation : AIR 1943 Mad 213 : (1942) 2 MLJ 806

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These two civil revision petitions both arise out of an application for a declaration of the amount of a debt under the rules framed by the local Government in G.O. No. 2634 Development, dated 27th October, 1939, u/s 28 (2) of Madras Act IV of 1938. C.R.P. No. 497 of 1941 is against the decision of the District Judge that the appeal preferred to him from the trial Court's order was incompetent. The learned District Judge held that the appeal was incompetent on the ground that rule 9 which provides a right of appeal is ultra vires. This view cannot be now sustained. Rule 9 is within the powers of the local Government, but it does not follow that the appeal preferred to the learned District Judge was a competent appeal. Under rule 9 a right of appeal is given against an "order of the Court declaring the amount of the debt under rule 7". In the present case there was no order of the District Munsiff declaring the amount of the debt. The learned District Munsiff came to the conclusion that the debt which the petitioner sought to scale down was one falling within the purview of Section 10 (2) (ii) and that it was therefore exempt from the operation of Act IV of 1938 and he dismissed the petition. Although the decision of the learned District Munsiff was a decision that the debt was immune from reduction under Act IV of 1938, there is no decision which can be deemed to be a declaration of the amount of the debt. We are therefore constrained to hold that no appeal lay to the learned District Judge, although we do not agree with the grounds upon which the learned Judge rejected the appeal. It follows that C.R.P. No. 497 of 1941 has to be dismissed.

2. C.R.P. No. 498 of 1941 is a petition to revise the order of the District Munsiff against which the abortive appeal was preferred. The essential facts are that the respondents sold 14 acres of land to one Ayyaswami for Rs. 6,000 on 7th November, 1918, and on the same day Ayyaswami mortgaged under Ex. A the same land to respondent for the sale price. In 1926 Ayyaswami sold the land which he had purchased in plots to different individuals. The petitioner's husband Muniswami purchased one plot Under a sale-deed which directed him to pay Rs. 960 towards the discharge of the respondent's mortgage Ex. A. By a similar sale one Venkatarama Reddi purchased another plot, the sale-deed containing a similar direction to pay proportionately to the discharge of Ex. A. In 1927, this other vendee Venkatarama Reddi sold part of the land which he had purchased to the petitioner's husband Muniswami and, the sale-deed again contained a direction to pay a proportionate sum out of the sale price towards the discharge of the respondent's mortgage Ex, A. It does not appear that there was any endorsement on the respondent's mortgage Ex. A made contemporaneously with any of these sale-deeds and there are no materials before us to indicate that the respondent agreed to release his vendee from his liability at this time. On the 1st day of May, 1927, Muniswami executed a mortgage Ex. I in favour of the respondent, the consideration for which was, made up of two amounts which Muniswami, had undertaken to pay under his two sale-deeds, one the sale-deed from Ayyaswami and the other the sale-deed from Ayyaswami's vendee, Venkatarama Reddi. The amount of this mortgage was Rs. 2,000 and on the date of the mortgage an endorsement of discharge to this extent was made on Ex. A the mortgage executed by Ayyaswami. Ex. A was finally discharged in 1935;

3. The question is whether the debt under the mortgage Ex. I for Rs. 2,000, dated 1st May, 1927, is a liability for which a charge is provided u/s 55 (iv.) (b) of the Transfer of Property Act, so as to bring it within the protection of Section 10 (2) (ii) of Act IV of 1938. We have held in *M. Varadaraja Perumal Pillai and Another Vs. Palanimuthu Goundan*, that when there was a debt, incurred originally for the balance of the purchase price of land, embodied in a promissory note which underwent a number of renewals, the debt due under the final renewal was a debt in respect of which the protection of Section 10 (2) (id) of Act IV of 1938 can be invoked, even though the vendor's lien might no longer subsist at the time when the debt is enforced, the reason being that the exclusion of such liabilities from the operation of Act IV of 1938 depends not on the actual subsistence of the charge, but on the question whether in the beginning the liability was one in respect of which the Transfer of Property Act provided a charge. It seems to us that this decision governs the present case. When Ayyaswami sold his properties to Muniswami and to Venkatarama Reddi, the purchaser had notice of the subsistence of the lien and the same notice must be deemed to have been given to Muniswami when he later purchased a further plot from Venkatarama Reddi. There is nothing to show that the lien had been terminated by any act of the vendor; and when the ultimate purchaser

consolidated his liabilities by the execution of the mortgage now in question (Ex. I), he was in fact renewing a liability in respect of which at its inception the vendor's lien existed. We hold therefore that the decision of the District Munisiff is correct and dismiss C.R.P. No. 498 of 1941.

4. The respondent will be entitled to his costs in C.R.P. No. 497 of 1941.