

Mayankutty and ors. Vs. Bappu

Mayankutty and ors. Vs. Bappu

SooperKanoon Citation : sooperkanoon.com/719142

Court : Kerala

Decided On : Dec-22-1971

Reported in : AIR1972Ker164

Judge : P. Subramonian Poti, J.

Acts : Kerala Agriculturists Debt Relief Act, 1970 - Sections 2; [Transfer of Property Act, 1882](#) - Sections 55(4); [Negotiable Instruments Act, 1881](#) - Sections 16

Appeal No. : Second Appeal No. 683 of 1971

Appellant : Mayankutty and ors.

Respondent : Bappu

Advocate for Def. : V. Bhaskaran Nambiar,; C.R. Natarajan,; M.K. Ananthakris

Advocate for Pet/Ap. : T.R. Govinda Wariyar and; Ramakumar K., Advs.

Disposition : Appeal allowed

Judgement :

P. Subramonian Poti, J.

1. The question that is raised in this Second Appeal concerns the applicability of the provisions of the Kerala Agriculturists Debt Relief Act 11 of 1970 (hereinafter

referred to as the Act) to the debt under the decree which is sought to be executed. Appellants are the judgment-debtors under a decree obtained on the strength of a promote. The promote was executed by the appellants, who are defendants in the suit, in favour of one Abdutty. It was for Rs. 2000/-. Out of this, Rs. 1500/- has been paid. The balance amount of Rs. 500/- was not paid and that an interest was due. The promote was endorsed in favour of the plaintiff in the suit by Abdutty on 10-8-1968 and the suit was filed as an endorsee of the pronote to recover the money claimed under the promote. That suit was decreed and it is in execution of that decree that the appellants, as judgment-debtors, sought to discharge the decree debt in instalments under Act 11 of 1970. This was allowed by the Munsiff who held that the debt comes within the definition of 'debt' in the Act. Therefore the execution petition was struck off. This was reversed by the appellate Judge before whom the decree-holder filed an appeal, that court holding that the debt comes under the exemption in Section 2 (iv) (g) of the said Act. It is that which is challenged in the appeal by the Judgment-debtors.

2. The promote was executed in favour of Abdutty in lieu of amount due to him as balance of consideration under the sale deed executed by him in favour of the appellants. The amount was not reserved in the sale deed itself to be paid later. The sale deed showed that the consideration under the deed had been discharged. But actually on the same day a promote for Rs. 2000/- was executed in favour of the vendor by the vendees in these circumstances could it be said that the debt is a liability 'for which a charge is provided under Sub-clause (b) of clause (4) of Section 55 of the [Transfer of Property Act, 1882](#)' which is exempted from the definition of a debt? The further question is even assuming it to be so, could it be said of a 'debt' due to an endorsee of the pronote.

3. Section 2 (iv) (g) of the Act corresponds to Section 2 (c) (vii) of the Kerala Agriculturists Debt Relief Act, 1958. I have to refer to two decisions of this Court in which the scope of this Sub-section was considered. It is just to indicate that what is contemplated by the Sub-section is not the actual subsistence of a charge under Section 55(4)(b) of the Transfer of Property Act, but only a category of liability for which a charge is provided in Sub-clause (b) of clause (4) of Section 55 of the Transfer of Property Act. It was held by this Court in *Pathrose v. Bhanu*, (1961 Ker

LT 373) thus:

'This only means that Sub-clause (vii) of Section 2 (c) specifies a category of liability to which the Act does not apply and nothing turns on the actual subsistence of the charge.'

Therefore even if the charge under the section does not subsist on the date the Act is sought to be made applicable to the debt, it will come within the exemption, provided it belongs to that category of debts. If that is no longer such a debt, it having been extinguished and a new relationship created it cannot be said that the debt belongs to such a category. This Court further held in *Kunjukunju v. Ambujakshan*, (1962 Ker LT 254) thus:

'And if the intention of the Legislature was only to specify the category of cases to which the Act was not to apply and the exclusion of such categories of debt does not depend on the subsistence of the charge but on the question whether in the beginning the liability was one falling within the category, the only further question can be whether the liability before us falls within the category or not.' Questions have arisen whether clauses in documents should be construed as reserving purchase money in the hands of the vendee or whether such clauses should be construed as only a covenant to pay money in future. I need not go into those questions here. It is well settled that when the relationship arises out of a fresh transaction which extinguishes the liabilities as between the parties as vendors and vendees, there is no question of the debt being considered as belonging to the category to which the exemption would apply. It is true that a mere personal covenant to defer payment of the purchase money or to take the purchase money in instalments need not necessarily exclude the charge arising in respect of unpaid purchase money. Nor is the charge excluded by any contract, covenant or agreement with respect to purchase money which is not in any way inconsistent with the continuance of the charge. I need refer only to the decision in *Webb v. Macpherson*, (1904) ILR 31 Gal 57 (PC) in support of this position.

4. As indicated in *Krishnaswamy v. Subramonia Ganapathigal*, (35 Mad LT 304) = (AIR 1918 Mad 82), whether the vendor's lien is lost when a pronote is taken towards part of the consideration would depend upon whether the pronote is

accepted as a collateral security or otherwise and this would necessarily depend upon the intention of the parties. Therefore what is to be considered in cases where these questions may arise is whether the parties intended the earlier transaction to be still kept alive notwithstanding the execution of a pronote. I have not been shown any terms in the sale deed in the instant case which would keep alive the right to the vendor's lien in spite of execution of the pronote.

5. It is well settled that an endorsee of a pronote does not obtain an assignment of the debt but only gets the property in the pronote. When an endorsee sues on the basis of an endorsement his suit is not on the original debt but on the negotiable instrument. If that be the case, no other question would arise in this case as the plaintiff in the suit is an endorsee of the pronote and the suit is not on the debt but on the pronote. Therefore whatever might be said in a suit which could have been brought by a promisee under the note the position is different when the endorsee files a suit. The exemption in Section 2 (iv) (g) will not cover such a case, so much so, the debt would be one falling within the purview of Act 11 of 1970.

In the result, I allow the Second Appeal and hold that the appellants are entitled to the benefits under the said Act. Therefore, I set aside the decision of the Court below and restore the decision of the Court of first instance. in the circumstances of the case, I direct the parties to suffer costs.