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C. Chenchamma Vs. K. Kumaraswami Naidu (Died) and ors.

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Court : Chennai

Decided On : Mar-06-1963

Reported in : AIR1963Mad397; (1963)2MLJ172

Judge : Jagadisan, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 48 and 48(1); Madras Indebted Agriculturists (Repayment of Debts) Act, 1955 - Sections 2, 4(1) and 4(7)

Appeal No. : A.A.A.O. No. 90 of 1958

Appellant : C. Chenchamma

Respondent : K. Kumaraswami Naidu (Died) and ors.

Advocate for Def. : A. Venkatachari and ;Sundaravaradan, Advs.

Advocate for Pet/Ap. : V. Ramaswami, Adv.

Disposition : Appeal allowed

Judgement :

1. I have heard learned counsel on both sides on the merits of this civil miscellaneous second appeal. The only question that arises for consideration is whether the execution petition filed by the appellant before the District Munsif's Court, Tiruvallur E. P. N. 466 of 1955 is barred by Limitation or barred by the provisions of Section 48, C. P. C. The course of execution proceedings is not fully

depicted in the judgment of the Courts below, but, however, I shall refer to the facts as they appear and as they are set out in these judgments.

2. The appellants obtained a simple money decree recoverable from the respondents and some others on 15-3-1941 in O. S. No. 546 of 1940 on the file of the District Munsif's Court, Sholinghur. He filed the petition E. P. No. 116 of 1953, in the Sholinghur Court for execution of the decree. The execution proceedings appear to have been transferred to the District Munsif's Court, Chittoor and again from the Chittoor Court to the District Munsif Court, Tiruttani due to the reorganisation of States whereby the territorial limits of the Sholinghur Court became part of the Madras State. It also appears that the appellant was prevented from executing the decree in respect of the property within the territory of Tiruvallur Munsif because of the Madras Ordinance V of 1953 and Madras Act V of 1954. The execution proceedings were, however, transferred from the Tiruttani Court to the Munsif's Court, Tiruvallur, on 7-8-1955. E. P. No. 466 of 1955, from out of which this second appeal arises, was filed in the Tiruvallur Court on 25-8-1955. The question is whether this petition offends the provisions of Section 48, C. P. C.

3. The order of the learned Subordinate Judge holding that the appellant (decree-holder) is disentitled to execute the decree as twelve years had elapsed from the date of the decree, viz., 15-3-1941, does not appear to be sound as the learned Judge failed to take into account the provisions of Madras Act I of 1955. I shall now refer to the relevant statutory provisions. Section 48, C. P. C. is as follows:

'48 (1). Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from--(a) the date of the decree sought to be executed, and (b) where the decree or any subsequentorder directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree...'

4. The word 'debt' as defined by Madras Act I of 1955 includes a decree also. Section 2 Clause (b) of Madras Act I of 1955 defines 'debt' as follows:

' 'debt' means any liability in cash or kind, whether secured or unsecured, due from an agriculturist on the 1st October 1953 whether payable under a contract or decree or order of a Court, civil or revenue...... ....'

5. It is not necessary to refer to the exceptions provided for under Section 2(b). Now Section 4 of Act I of 1955 is the crucial provision.

Section 4(1):

'Notwithstanding any law, custom, contract, or decree of Court to the contrary, an agriculturist shall be entitled to pay within four months of the commencement of this Act the interest due on any debt due by him upto the commencement of this Act and one-eighth of the principal outstanding or one-fourth of the total amount outstanding, whichever is less, and the balance of the debt in three equal annual instalments on or before the 1st July of each of the succeeding three years with the interest due on such instalment upto that date. Explanation: In the case of a decree, the amount decreed shall be deemed to be the principal......

7. The provisions of Sub-section (1) shall, for purposes of execution, be deemed to be a subsequent order of Court within the meaning of Clause (b) of Sub-section (1) of Section 48, C. P. C. 1908 (Central Act V of 1908).'

6. Section 48, C. P. C. enacts a bar to the presentation of a fresh application for execution after the expiration of twelve years which would run ordinarily from the date of the decree sought to be executed, or, from the date of the default of payment in case where the decree or any subsequent order directs payment of money to be made at a certain date or at recurring periods. If the decree directs payment of the decree amount on specified dates or at recurring periods, the decree-holder cannot recover the amount contrary to the terms of the decree at any time anterior to the dates fixed or the periods, recurring. Surely the twelve years period cannot, in such cases, commence to run from the date on which the decree is passed. Necessarily, therefore, the period of 12 years has to be computed only from the date of the default in making the payment. The default would arise only after the dates or periods specifically mentioned in the decree. The terms of the decree can be modified by a subsequent order of a competent

Court. For example, Order XX, Rule 11(2), C. P. C. as amended in Madras, provides that the Court may direct the payment of the decree amount by instalments. The provision reads as follows:

'After the passing of any such decree the Court may, on the application of the judgment-debtor and after notice to the decree-holder, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.'

7. A decree which is converted into an instalment decree by an order of Court under Order XX, Rule 11(2) would fall within Section 48(1)(b), C. P. C.,

8. Reference may be made to the, decisions of this Court reported in Perumal Naicker v. Davood Rowther, AIR 1917 Mad 188 and in Tata Charlu v. Kendala Ramachandra, ILR 7 Mad 152 in support of this position.

9. The real question now in issue is the effect of Section 4, Sub-section (7) of Madras Act I of 1955. By the operation of the statute a decree for payment of a single amount is converted, as it were, into an instalment decree, the first instalment being payable within 4 months from after the commencement of the Act (1st March 1955), the second instalment on 1st July 1955, the third on 1st July 1957, and the fourth on 1st July 1958. The statute provides that this statutory modification of the decree has the same effect in law as a subsequent order of Court within the meaning of Section 48(1)(b), C. P. C. It cannot be doubted that a decree the execution of which is not barred by Section 48 on the date of the commencement of Madras Act I at 1955 would fall within the mischief of this Act. Of course the debt which includes a decree should be a debt due from an agriculturist on 1st October 1953 as that is the definition of the word 'debt' in the Act. If there is a decree debt payable by an agriculturist 9n 1-10-1953, and, if the decree is capable of being executed on the date of the commencement of the Act without any bar of limitation or without the bar under Section 48, C. P. C., Section 4 Sub-section (7) would come into play and the integrity of the decree is impaired by reason of the modification that the decree amount becomes payable in four instalments as laid down under Section 4 Sub-section (1).

10. In Sankaralinga Konar v. Venkatachala Konar : (1960)2MLJ67 , I had occasion to consider the scope and effect of Section 4 of Madras Act I of 1955. I held that by reason of Section 4 of the Act, a decree amount due by an agriculturist is payable only in instalments and that by force of that statute the decree becomes an instalment decree and limitation has to be computed accordingly. At page 68 I have observed as follows:

'An instalment decree does not necessarily mean a decree which ex facie makes the amount due under the decree payable in instalments. If the decree-holder can recover money only in instalments as provided by the statute and has to wait for the instalments to become due, it would be unreasonable to hold that all the time he was made to wait for the payment of the instalment, the statute of limitation was running against him. Reference may also be made to the provisions of Sub-section (7) of Section 4 of Madras Act I of 1955, which clearly indicates that the decree is in the nature of an instalment decree.'

11. In Gopal Udayar v. Mangla Udayar : (1962)1MLJ337 , Srinivasan, J. held that Section 4 of the Act lays down the rights and obligations between the parties to a transaction in variation of the contract they have entered into, that it provides, that a debt shall be payable in a particular manner, viz., in instalments, and that each instalment furnishes a cause of action for the creditor and that he can sue for the recovery of that instalment if it is not paid within the time prescribed. The period of limitation for such cases was held to be governed by Article 74 of the Limitation Act.

12. This was no doubt a case of an ordinary debt which had not merged into a decree. But, as pointed out already, the definition of 'debt' under the Act is comprehensive enough to include a decree of Court also. In my opinion, reading Section 48, C. P. C. and the provisions of Section 4 Sub-section (7) of Madras Act I of 1955, it seems to be clear that a decree debt recoverable froman agriculturist on 1st October 1953 becomes statutorily converted into an instalment decree payable on the dates mentioned in Section 4 Sub-section (1) of Madras Act I of 1955, and, to such a decree Section 48 Sub-section (1)(b), C. P. Code is necessarily attracted. It cannot, therefore, be said in the present case that the

appellant's application for execution, E. P. No. 466 of 1955, is barred by limitation under Section 48, C. P. C.

13. In the result, the civil miscellaneous second appeal is allowed and the order of the learned Subordinate Judge of Chingleput is hereby set aside and that of the District Munsif, Tiruvailur, is restored. There will however be no order as to costs throughout. The execution petition E. P. No. 466 of 1955, is hereby restored to the file of the executing Court to be disposed of afresh in the light of the observations contained in this judgment. No leave.

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