

Ramadoss Reddiar Vs. Munuswami Reddiar

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Court : Chennai

Decided On : Sep-13-1940

Reported in : AIR1941Mad116; (1940)2MLJ825

Appellant : Ramadoss Reddiar

Respondent : Munuswami Reddiar

Judgement :

Wadsworth, J.

1. This petition raises the question whether the provisions of Section 15 of Act IV of 1938 can be applied so as to discharge a decree obtained by the endorsee of a promissory note executed for arrears of rent. On 11th February, 1936, the petitioner executed a promissory note for the arrears of rent due for fasli 1345 and previous faslis. The promisee under the note was one of the two zamindars of the village. He endorsed the note in favour of his co-zamindar, who filed a suit on the note and got a decree on 28th September, 1937. On 5th November, 1938, the petitioner applied under Section 19 of the Act to amend the decree after declaring that the plaintiff was entitled to nothing thereunder except the amount of costs, inasmuch as the entire subject-matter of the suit comprising arrears had been discharged by paying in the Collector's office the arrears for faslis 1346 and 1347. The application was rejected and it is this order of which revision is sought.

2. Section 19, under which the application was made, in terms applies only to decrees for the repayment of debts. But there can be no doubt that a similar procedure can be invoked under Section 15 for the discharge of a decree for rent, having regard to the terms of the first clause of that section. By that clause it is provided that (subject to the payments contemplated in the proviso) all rent for fasli 1345 and prior years which is outstanding on the date of the commencement of the Act shall be deemed to be discharged, 'whether the rent be due as such or whether a decree has been obtained therefor.' Now the Court which passed the decree on the promissory note is not concerned with the arrears of rent on the petitioner's holding, unless this decree can be deemed to be a decree for rent, a fact which the applicant seems to recognise by making his deposit with the Collector and filing his application for amending the decree as one under Section 19. We are not therefore concerned with the discharge of rent 'due as such', but with the discharge of rent where 'a decree has been obtained therefor' and even though the arrears of rent covered by the promissory note might be deemed to be still outstanding - or in suspense, as some decisions have put it - the petitioner can claim no relief under this application unless the decree on the promissory note is a decree for arrears of rent.

3. On the question whether the decree on the promissory note can be regarded as a decree for rent, it seems to us that we are bound by the decision of the Special Bench in *Commissioner of Income-tax Madras v. Zamindar of Kirlampudi* (1931) 63 M.L.J. 20 : I.L.R. 55 Mad. 830 . The question in that case was whether interest due to a zamindar under promissory notes taken from his ryots for arrears of rent was agricultural income and it was held that it was not, the reasoning being that by the fresh contract between the zamindar and the ryots, the actual character of the liability had been changed into a loan and had ceased to be rent. It follows from this decision that the decree on the promissory note is not a decree for rent. We are not really concerned in this case with the question whether in circumstances such as these, a suit on the original liability for rent would lie. Assuming that it would and that there is therefore rent still outstanding, the petitioner cannot, by the process provided under Section 15 of the Act, get rid of the decree on the promissory note unless that decree be a decree for rent, which it is not in form and which, on the authority of the decision just cited, it must be held not to be in

substance. The decree being, as it purports to be, a decree for a debt, it will fall not under Section 15, but under Sections 9 and 19 of the Act, as has been held by the lower Court.

4. In the view we take it is unnecessary to go into the further question of the effect of the endorsement of the note to the plaintiff a co-zamindar, by the original payee. The petition is dismissed with costs.

Patanjali Sastri, J.

5. I agree and would only add that, if the matter was not covered by authority, I would be inclined to the view that a promissory note taken for arrears of rent merely provided a new remedy with certain legal incidents, and I should have found some difficulty in subscribing to the proposition that, in such circumstances, the character of the liability is so changed that what remains payable is no longer 'rent' but only a 'debt'. But, as pointed out in the judgment of my learned brother, a Special Bench of three Judges has made that proposition the basis of their decision, and I feel bound to follow it.

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