

Pechiammal and ors. Vs. Devakottai Nattukottai Nagarathar Dharma Paribalana Sangam, Through Its Secretary and ors.

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Court : Chennai

Decided On : Jan-03-1990

Reported in : (1990)1MLJ67

Appellant : Pechiammal and ors.

Respondent : Devakottai Nattukottai Nagarathar Dharma Paribalana Sangam, Through Its Secretary and ors.

Judgement :

ORDER

Abdul Hadi, J.

1. This Civil Revision Petition by the legal representatives of the judgment-debtor is against the order, dated 8-4-1986 in E.P. No. 136 of 1982 in O.S. No. 261 of 1979 directing further prosecution of the Execution Petition by the decree holder - 1st respondent herein for sale of the suit mortgage property for realising the decree amount under the final mortgage decree dated 16.10.1981. The amount claimed in the E.P. is about Rs. 63,000 and odd. The petitioners, who are respondents 5 to 7 in the Execution Petition and the legal representatives of the deceased judgment-debtor 1st respondent in the Execution Petition, contended before the Court below that they were debtors under the Tamil Nadu Debt Relief

Acts 13 of 1980 and 50 of 1982 and that hence the decree debt should be deemed to have been discharged under the said Acts, consequently, the abovesaid E.P. would not lie. (The definition of the term 'Debtor' and other relevant definitions of other related terms are same in both the abovesaid Acts and, so reference is made in this order only to Act 13 of 1980) Earlier, the judgment-debtor and his son who is the 2nd respondent in the E.P. and also herein claimed the same benefits under the said Act. But their claim was negatived. The Execution Court below held that in view of the admission of the 5th respondent before it, as R.W.I that in 1982 itself the mortgaged property was worth more than Rs. 25,000 respondents 5 to 7 before it (Petitioners herein) were not 'debtors' under said Act, because Section 3(d), Proviso (vi) of the above said Act states 'that a person shall not be deemed to be a debtor if he or any member of his family, whether individually or jointly owns in this State or elsewhere any other immovable property (other than agricultural lands) the market value of which exceeds twenty-five thousand rupees'. The property in question in the present case is no doubt an immovable property other than agricultural land. Because of the use of the expression 'individually or jointly owns' in the abovesaid proviso, the Execution Court below came to the conclusion that in view of the abovesaid admission that the market value of the property in question which is jointly owned by the petitioners herein exceeds Rs. 25,000 they cannot be termed 'debtors' under the Act.

2. But the learned Counsel for the petitioners points out that the Court below erred in its omission to note the definition of the term 'family' in Section 3(e) of the Act, which runs as follows:

'Family' in relation to a person, means the individual, the wife or husband, as the case may be, of such individual and their unmarried minor children.

His contention is that the petitioners who are only sisters cannot come under the definition of the term 'family' in relation to each other. It is so. I agree with him. This Court also held in *Karuppana Thevar v. S.R. Karuppiiah Thevar* : (1982)1MLJ345 that two brothers cannot constitute a 'family' in relation to one another. So, each of the petitioners should be taken only as owning a property worth less than Rs. 5,000 each of them being entitled to only a fraction of the entire property, since the

property has been inherited by them and one other son jointly and each of them would be a 'debtor' under the Act.

3. The learned Counsel for the petitioners brought to my notice to Full Bench decision reported in *Kaliyammal v. Ragiurama Gounder* (1989) 1 L.W. 253 holding that the definition of the debtor in Tamil Nadu Debt Relief Acts 38 of 1972, 50 of 1982 and 13 of 1980 would include the heirs and legal representatives of the original debtor, who incurred the debt. There their Lordships observed thus:

But, in view of the special Acts, namely, Debt Relief Acts enacted by the State, if the debtor satisfies the definition of the word 'debtor' the entire debt is liable to be wiped out. It is also submitted by the Learned Counsel that the Special enactments put an end to the general laws, the beneficial clause being extended not only to the judgment-debtor but also to his successors and legal representatives. When the objects and the preamble are taken into consideration and a liberal construction is given even though a plain reading of the meaning does not include the legal representatives of the debtor, the court can read the meaning of the word 'debtor' as it includes the legal representatives, assigns and successors being their beneficiaries in view of the ratio laid down in the decision of the Supreme Court and Division Benches. We find much force in this contention.

4. On the other hand, the learned Counsel for the first respondent-decree holder pointed out that though the Full Bench decision held that the legal representatives of the original debtor are also debtors under the Act, it did not actually hold whether the said legal representatives could set up any other defence other than the original debtor (their predecessors) could have raised. Learned Counsel also pointed out that the Full Bench actually relied on a decision of the Supreme Court reported in *Kidar Nath v. Mangai Bai* (1970) 2 S.C.J. 348. In that Supreme Court case a question which arose for consideration was whether it was open to the Legal representatives of a debtor to invoke the help of Section 30 of the Punjab Relief of Indebtness Act, 1934 in a suit for possession by redemption and the said question was no doubt answered in the affirmative. There, the Supreme Court has observed as follows:

The obligation is enforceable against the estate of the debtor in the hands of his legal representatives, and when it is sought to be enforced in the absence of an express provision, or clear intendment to the contrary the representatives may set up the defence which the original debtor could if he had been sued have set up.

Therefore, the learned Counsel for the respondent decree holder contended that the petitioners who are the legal representatives of the original debtor, though they are debtors under the Act, could not set up any defence which could not have been set up by the original debtor, who incurred the debt. As stated above, the original debtor himself set up the plea that he was entitled to the benefits of the Act and that plea was not accepted. While so, the learned Counsel for the respondent contended that his legal representatives also could not claim any benefits under the Act. I think, the contention of the respondent's counsel cannot be accepted. The Supreme Court itself qualifies the above statement (that the legal representatives may set up defence which the original debtor could have set up) by the clause - 'in the absence of any express provision or clear intendment to the contrary' and the Full Bench decision, in the above quoted passage takes into consideration the object and the preamble of the Acts and comes to conclusion that the legal representatives also are entitled to the benefits of the Act. So, it has only to be concluded that 'clear intendment to the contrary' is there in the said Acts and that the said legal representatives can set up an independent plea other than what the original debtor could have set up. The abovesaid Full Bench decision itself refers to an earlier Division Bench decision reported in *Kama Hasan Fathima Bivi v. Muhammad Muhaideen Nachiar* : AIR1943 Mad87 , wherein it was held that under the Tamil Nadu Agriculturists Relief Act 4 of 1938 even though the original debtor was not an agriculturist, his legal representatives can claim the benefit of the said Act if he (the legal representative) is an agriculturists. In that context the Division Bench relied on a passage in an earlier Division Bench Judgment reported in *Perianna Goundar v. Sellappa Gounder* I.L.R. 1939 Mad. 219: A.I.R. 1939 Mad. 186 which was also referred to in the abovesaid Full Bench decision. The said passage runs as follows:

Its (Act 1 of 1938) avowed purpose was to enable agriculturists to retain their property and prevent such property passing into the hands of creditors or

execution purchasers.

Therefore, it cannot be said that the Full Bench did not consider this aspect of the matter, namely whether the said legal representatives could set up any other defence other than the original debtor could have raised.

5. The learned Counsel for the respondent also submitted that the petitioners did not obtain certificate from the Tahsildar under Section 6 of the Act and hence they were disentitled to claim the benefits of the Act. This contention has no substance, in view of the decision in *Perumal v. Chinna Kuppanna Gounder* (1981) 2 M.L.J. 1 particularly the following observations therein:

A question may also arise as regards matters under Sections 5 and 6 of the Act committed to the adjudication of the Tahsildar, but which have already proceeded to a decree. Even in such cases, it is only the Civil Court which has to consider the question whether a person is entitled to the benefits of the Act as a 'debtor' and if so, to grant relief, as provided under Section 4(1) (a) to (d). This also stands to reason because a decree of a civil court validly passed and legally effective and enforceable cannot be undone by a Tahsildar acting under the provisions of the Act. In the absence of a provision in the Act for ripping open decrees already passed by the Civil Court it certainly cannot be undone by a Tahsildar acting under the provisions of the Act. It would be quite in keeping with the object of the legislation that even in such cases, the Courts should, when a claim to benefits under the Act is made, investigate the claim and afford appropriate relief under Section 4(1) (a) to (d) of the Act as the case may be.

6. Therefore, the order of the Court below cannot be sustained, hence is set aside and the Civil Revision Petition is allowed. No costs.