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Thirugnanavalli Ammal Vs. P. Venugopala Pillai

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Court : Chennai

Decided On : Oct-24-1944

Reported in : AIR1945Mad125; (1945)1MLJ20

Appellant : Thirugnanavalli Ammal

Respondent : P. Venugopala Pillai

Judgement :

ORDER

1. The question is whether the case falls under Section 4, Clause (a) of Madras Act IV of 1938 which runs thus:

Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads : (a) any revenue, tax or cess payable to the Provincial Government.

The respondent in this petition paid the revenue due to the Provincial Government for two faslis, and this Court held that he was entitled to recover the sums paid with interest at six per cent per annum from the dates of payments. Thereupon this petition was filed by the defendant to have the provisions of Madras Act IV of 1938 applied and for scalirig down. We sent the petition to the lower Court for findings. The lower Court has returned a finding that the petitioner is an agriculturist and that he is entitled to the benefits of the scaling down provisions. Objection is taken that the case falls under Section 4(a) of the Act and that therefore the debt is not liable to be scaled down. It is urged that the liability of the defendant falls under the head of 'revenue payable to the Provincial Government' within Section 4(a) set out above and that therefore the petitioner is not entitled to have it scaled down.

2. It is said on the other side that the petitioner is no longer under a liability to pay the revenue to the Provincial Government as it was paid by the present plaintiff while he was in possession of the property practically in the capacity of a receiver of Court, that what is now claimed is a right to recover in equity the sum paid by the plaintiff in respect of revenue due by the petitioner and that Section 4(a) does not therefore apply.

3. We are inclined to hold that the expression 'liability falling under the head of revenue due to Provincial Government' does not imply that the liability to pay the revenue to the Provincial Government should be subsisting on this date or that the suit itself should be directly by the person entitled to claim the revenue for recovery of 'revenue' as such.

4. The provision under Section 4(a) is analogous to the provision contained in Section 10(2)(ii) of the Act which runs thus:

Nothing contained in Sections 8 and 9 shall affect any liability for which a charge is provided under Section 55, Clause (4) Sub-clause (b) of the Transfer of Property Act.

This clause was the subject of consideration by Wadsworth and Patanjali Sastri, JJ. in Perumal v. Palanimuthu (1943) 2 M.L.J. 160 : I.L.R. (1943) 2 Cal. 517. There A sold the property to B who executed a promissory note for part of the unpaid purchase money in favour of A. A endorsed the promissory note to a third party and the endorsee filed a suit on the promissory note. The defendant claimed that the debt should be scaled down. He contended that the charge given under Section 55(4)(b) of the Transfer of Property Act was not subsisting, that the suit was not to enforce that charge, that the charge right did not pass to the assigee of the promissory Botes and that therefore the liability was not one covered by Section 10, Clause (2), Sub-clause (ii) already set out. The learned Judges held against the defendant. They pointed out that the section is capable of two constructions and they said this:

Assuming that there was in fact no charge which the plaintiff-assignee could work out against his debtor, is the plaintiff entitled to rely on the provisions of Section 10(2)(ii)? This provision may be read in two ways. It may be read as safeguarding any liability for which a charge under Section 55(iv)(b), Transfer of Property Act subsists; or, it may be read as protecting any liability of the category of liabilities in respect of which a charge is provided under Section 55(iv)(b) of the Transfer of Property Act. We are of opinion that the latter interpretation is the correct interpretation and that the intention of the Legislature was to specify those classes of liabilities in respect of which the scaling down provisions of the Act were not to operate and that the exclusion of liabilities of these categories was not to depend on the actual subsistence of the charge but on the question whether in the beginning the liability was one belonging to that category in respect of which the Transfer of Property Act provided a charge.

Now, applying this criterion to the present case, undoubtedly the liability of the judgment-debtor to his vendor was one in respect of which a charge was created by the operation of Section 55(iv)(b) of the Transfer of Property Act. It is, as we have suggested, doubtful whether that charge could be enforced by an endorsee of the promissory note in the absence of a registered conveyance But the essential category into which the liability falls is not in our opinion, affected by the assignment of this liability to a third party and we consider it is one which falls into the category referred to in Section 10(2)(ii) of the Act. As we have more than once pointed out, this Act IV of 1938 is an ex-propriatory measure and, if there is any doubt as to the meaning of its terms, that doubt should be resolved in favour of the person expropriated and not of the person who claims the right to expropriate.

This reasoning applies to our case. 'Undoubtedly the liability of the judgment-debtor to the Provincial Government was in respect of revenue. In the beginning the liability was one falling under the category provided in Section 4, Clause (a). The learned Judges in the above case proceeded on the footing that the charge right did not pass to the plaintiff, that the suit was not one to enforce the charge and that the charge did not even subsist. Even then Section 10(2)(ii) was held to apply on the ground that the liability in the beginning was one falling under Section 10(2)(ii). In the present case the liability of the petitioner was in the beginning to pay revenue due to the

Provincial Government; he never paid it. It was paid by the plaintiff under circumstances which we held gave the plaintiff a right to recover that sum from the defendant. The defendant's liability to pay the revenue is the liability which the plaintiff seeks to enforce. He may not be the assignee of the rights of the Provincial Government. But that is not necessary, just as in the case cited above the plaintiff was under the charge-holder or the assignee of the charge right.

5. It is then urged that under Section 4(h) this Court has held that if a creditor who would be protected under that clause transfers the right to a person who does not come within the clause, he is not protected by the clause. Under Clause (4)(h) the criterion is that of the creditor. Is she a woman holding property not exceeding Rs. 3,000? In such a case where the creditor's status is the test different considerations may arise.

6. We are of opinion that the present case is covered directly by the decision in Perumalv. Palanimuthu1. We see no reason to take a different view after hearing the elaborate criticism offered at the Bar as regards the correctness of that decision. As the Judges there said, if there is a doubt, it should be resolved in favour of the person expropriated.

7. We differ from the lower Court and dismiss the petition with costs throughout.

8. The result is that there will be a decree for the sum adjudged with interest as already indicated.

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