Privy Council Appeal No. 8 of 1946

R.M.A.R.A. Adaikappa Chettiar - - - - - *Appellant*

v.

R. Chandrasekhara Thevar
alias **Sundara Pandia Thevar** - - - - - - *Respondent*

AND BETWEEN

R.M.A.R.A. Adaikappa Chettiar and another - - *Appellants*

v.

R. Chandrasekhara Thevar
alias **Sundara Pandia Thevar** - - - - - - *Respondent*

connected appeals (consolidated)

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1947.

Present at the Hearing :

LORD SIMONDS
LORD OAKSEY
LORD MORTON OF HENRYTON
MR. M. R. JAYAKAR
SIR JOHN BEAUMONT.

[*Delivered by* LORD SIMONDS]

These are consolidated appeals by special leave from two orders of the High Court of Madras, both dated the 27th January, 1942, the first setting aside in appeal an order of the Subordinate Judge of Ramnad at Madura dated 25th July, 1938, and the second setting aside in revision an order of the same Subordinate Judge made on the 9th February, 1939.

The substantial question for decision in these appeals is whether the respondent is an agriculturist within the meaning of the Madras Agriculturists Relief Act (Act IV of 1938) hereinafter referred to as " the Act ". But the appellant has argued as a preliminary point that, assuming the respondent to be an agriculturist within the meaning of the Act, the orders of the High Court which are under appeal were incompetent and that this appeal should succeed on that ground. It will be convenient to deal with this point first.

The facts relevant to the determination of this question are these:—

On the 15th September, 1925, a final decree was passed in a mortgage suit, which was original suit No. 5 of 1921 on the file of the Subordinate Judge of Ramnad at Madura, in favour of the appellants or their predecessors in title against the predecessor in title of the respondent. For convenience, the parties interested from time to time in the mortgage decree will in this part of this judgment be referred to as the " decree-holders " and the person interested in the equity of redemption as the " judgment-debtor ". Execution Proceeding No. 79 of 1933 was taken out to enforce the final decree and certain of the mortgage properties were advertised for sale, but before a sale had been effected the Act was passed in March, 1938.

On the 8th July, 1938, the judgment-debtor made Execution Application No. 237 of 1938 to the said Subordinate Judge, which was intituled E.A. No. 237 of 1938 in E.P. No. 79 of 1933 in O.S. No. 5 of 1921, and was expressed to be made under Sections 20, 19 and 8 of the Act, and Sections 47 and 151 of the Code of Civil Procedure. The relief prayed was that the Execution Proceedings in E.P. No. 79 of 1933 and the auction sale then pending be stayed until the disposal of the question of the extent of liability of the petitioner for the debt under Section 19 of the Act and a declaration that the debt was wholly discharged under Section 8 of the Act. In order to appreciate the nature of this relief it is necessary to notice that under Section 8 of the Act the debts of an agriculturist can be scaled down. Under Section 19 it is provided, so far as material for the present purpose, that where a Court has passed a decree for the repayment of a debt it shall, on the application of any judgment-debtor who is an agriculturist, apply the provisions of the Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, amend the decree accordingly, or enter satisfaction as the case may be. Section 20 provides that every Court executing a decree passed against a person entitled to the benefits of the Act shall, on application, stay the proceedings until the Court which passed the decree has passed orders on an application made or to be made under Section 19, but a proviso to the section enacts that where within 60 days after an application for stay has been granted the judgment-debtor does not apply to the Court which passed the decree for relief under Section 19, the decree shall be executed as it stands.

On the 25th July, 1938, Execution Application No. 237 of 1938 came before the Subordinate Judge who dismissed it summarily on the ground that the judgment-debtor was not an agriculturist. From that order an appeal was brought to the High Court of Madras and that Court directed the learned Subordinate Judge to submit a finding whether the judgment-debtor was an agriculturist and, if so, to what relief he was entitled under the Act. On the matter coming again before the Subordinate Judge on remand he heard evidence and delivered a detailed judgment on the 9th February, 1939. He found that the judgment-debtor was not an agriculturist within the meaning of the Act and was not entitled to any scaling down of the debt under the Act. Meanwhile, namely, on the 3rd August, 1938, the judgment-debtor had made an independent application I.A. No. 361 of 1938 in O.S. No. 5 of 1921 to the said Subordinate Judge asking that the preliminary and final decrees in the said mortgage suit be amended in accordance with the provisions of the Act and that the debt might be declared to have been wholly discharged. On the 9th February, 1939, after recording his findings in E.A. No. 237 of 1938 the learned Judge passed an order dismissing I.A. No. 361 of 1938, in view of his finding in E.A. No. 237 of 1938. The reasons for making this further application I.A. No. 361 of 1938 are not disclosed by the record but, presumably, the advisers of the judgment-debtor thought that it might be held that two applications to the Court were necessary, one under Section 19 to the Court which passed the decree, and another under Section 20 to the Court executing the decree, as would be the case if the two Courts were different. The danger of limitation running under the proviso to Section 20 had to be considered. But, as in the present case the two Courts were the same, and it is clear that both the Subordinate Judge and the High Court in considering whether the judgment-debtor was an agriculturist within the meaning of the Act were treating Execution Application No. 237 of 1938 as properly raising questions under Sections 8 and 19 of the Act as well as under Section 20, Application No. 361 of 1938 appears to have been redundant.

The judgment-debtor presented an appeal from the order of the 9th February, 1939, made in I.A. 361 of 1938, and that appeal came before the High Court of Madras at the same time as the appeal from the order of the 25th July, 1938, on its restoration with the findings of the Subordinate Judge on the matters remanded. But when the two appeals came before the High Court that Court was faced with a judgment of a Full Bench of the Court delivered in *A. S. Nagappa Chettiar* v. *Annapoorani Achi,* Indian Law Reports 1941 Madras, page 261, in which

it had been held that no appeal lay from an order passed under Section 19 of the Act. The High Court held that in view of this decision the appeal against the order of the 9th February, 1939, which had been made under Section 19 of the Act, was incompetent; but they had acceded to an application of the judgment-debtor to be allowed to convert his appeal into a Civil Revision Application and, holding that the Subordinate Judge had been guilty of material irregularity within the meaning of Section 115 of the Civil Procedure Code, they set aside his order of the 9th February, 1939, in revision. The Court nevertheless dealt with the appeal against the order of the 25th July, 1938, as an appeal, and directed that the order of the Subordinate Judge of the 25th July, 1938, made in E.A. No. 237 of 1938, be set aside and the application remanded, and directed the Subordinate Judge to restore the said application to its original number in the Register, and to proceed to dispose of it according to law and in the light of the observations and directions contained in the judgment of the High Court. As the High Court, as hereinafter noticed, had expressed the view that the judgment-debtor had proved that he was an agriculturist within the meaning of the Act, these directions involved that the Subordinate Judge would deal with the Execution Proceeding before him under Sections 8 and 19 of the Act.

Before considering the propriety and validity of the orders made by the High Court in the two appeals presented to them it is necessary, in the first place, to determine whether the decision of the Full Bench was right. The facts in the case before the Full Bench can be distinguished on the ground that in that case there were no proceedings in execution of the decree such as exist in the present case, but the Court expressed the view that the existence of execution proceedings would not make any difference. The view taken by the Full Bench was that Section 19 of the Act conferred a particular right upon a judgment-debtor and that, as the Act conferred no right of appeal from an order of the Court made under the section, no appeal was competent. The Court relied to some extent on the decision of this Board in *Rangoon Botatoung Company Limited* v. *The Collector, Rangoon* (1912) Indian Law Reports 40 Calcutta, page 21. That case, however, has been explained in later decisions of the Board as depending on the fact that the proceedings were from beginning to end ostensibly and actually arbitration proceedings. Their Lordships are not in agreement with the view of the Full Bench of the High Court of Madras. The true rule is that where a legal right is in dispute and the ordinary courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special Statute which does not in terms confer a right of appeal—*see Secretary of State for India* v. *Chelikani Rama Rao,* 43 Indian Appeals, page 192, and *Hem Singh and others* v. *Basant Das,* 63 I.A., page 180.

The question therefore to be considered in the present case is whether a right of appeal from the orders in question was conferred by the Civil Procedure Code. The order of the 9th February, 1939, was not made in Execution Proceedings but it was made in a suit and, in their Lordships' opinion, it amounted to the formal expression of an adjudication which so far as regards the Court expressing it, conclusively determined the rights of the parties with regard to one of the matters in controversy in the suit, namely, whether the judgment-debtor was an agriculturist and entitled therefore to have his debt discharged or reduced under the Act. In their Lordships' opinion the order was a decree within the meaning of Section 2 (2) of the Civil Procedure Code and an appeal lay under Section 96 of the Code. That being so the High Court was wrong in entertaining an application in revision, since under Section 115 of the Code there is no jurisdiction in revision where an appeal lies. The order of the High Court setting aside the order of the Subordinate Judge of the 9th February, 1939, will have to be set aside, but this is

not of any practical consequence since the application on which the order was made was redundant. The appeal against the order of the 25th July, 1938, was rightly entertained. That order related to the execution discharge or satisfaction of a decree within the meaning of Section 47 of the Code and an appeal therefore lay under Section 96.

The procedural questions having been thus disposed of upon the footing that an appeal lay against the order of the 25th July, 1938, it remains for their Lordships to consider the case on its merits. The single issue is whether the respondent has established that he is an agriculturist within the meaning of the Madras Agriculturists Relief Act (IV of 1938) and as such entitled to debt relief. And this question may now further be narrowed down, since other matters of dispute are no longer raised, by saying that the only controversy is whether the respondent was at the relevant time within proviso (D) to section 3 (ii) (*a*) of the Act. This in turn will depend on whether the respondent had a beneficial interest in certain villages to which reference will be made or whether those villages were wholly dedicated to charity. In the former event the respondent was not an agriculturist within the Act; in the latter event he was.

In the consideration of this question their Lordships think it right to have regard not only to the materials which were before the Subordinate Judge but also to the documents which were properly admitted in evidence by the High Court. That Court in allowing the appeal from the Subordinate Judge was no doubt influenced by such documents and they are in fact of substantial importance in considering the merits of the case.

The relevance of this matter is apparent in the consideration of the documents the interpretation of which is all important in the decision of this case. A few words of introduction are necessary to their consideration.

It appears that in the year 1843 there was litigation in the Madras Adalat Court in regard to the succession to the Ramnad Zamindari after the death of the late Zamindar between his widow Parvathavardhani Nachiar and his mother Muthu Veerayi Nachiar who set up rival claims to the estate, the latter being plaintiff in the suit and the former one of the defendants. This suit was eventually compromised upon certain terms. The Subordinate Judge had before him a document which is described as a certified copy of the special Vakalat given by one of the parties to her pleader to compromise the suit. This document embodied the terms of compromise and in the absence of better evidence was no doubt admissible in evidence. The learned Judge had also before him an unsigned document described as a draft compromise which, even if admissible, could be of little value. These documents can now be disregarded, for their Lordships have (as the High Court had) the advantage of seeing the authentic razinama or deed of compromise which was signed by or on behalf of the parties. This document (which is Exhibit WW in the proceedings) after stating the parties and the nature of the proceedings sets out in full the terms of compromise. It provides by clause 1 that the first defendant shall not only enjoy throughout her lifetime the " Ramnad Zamin, etc., all plaint-mentioned properties as have now been jarried to her but shall also adopt a son whom she may like as mentioned in the supplemental rejoinder " and that the son to be so adopted shall after her lifetime enjoy the said Zamindari with all properties from son to grandson and so on in succession. Clause 2 provides for certain yearly payments to be made by the first defendant to the plaintiff out of the income of the Zamindari, clause 3 provides for certain other payments, clause 4 for the enjoyment by the plaintiff of a certain bungalow, and clause 5 for certain immaterial matters. Then come the material clauses 6, 7 and 8 which are as follows:—

> " 6. The Plaintiff shall, for the performance of *annadhanam* (free feeding), etc., in the chatram which she is running at Ramnad, for ever, enjoy the villages of Siruvayal, Manjakulam and Kadambur in the Cusba taluk of the said zamindari and the village of Kilapanaiyur in Chikkan taluk, in all four villages of the total extent of one thousand

kalams *viraiyadis* (seed extent) as also the palace tope situate on the southern bund of the Lakshmipuram tank in the Ramnad Fort area and shall pay full tax for the nanja and punja lands of the said four villages as in the case of *dharmasanam* (lands).

7. Out of the net amisham (income) of the said zamindar during the administration of the Court of Wards and previous thereto, the amount invested in company, for interest and since drawn and deposited with the Collector, is Rs.6,74,983. The documents relating to Rs.3,37,491-8-0, out of this, shall be received by the Plaintiff and the documents relating to the balance of Rs.3,37,491-8-0 shall be received by the first defendant, through Court, by granting receipt. The Plaintiff shall enjoy as she pleases all the properties got by her under this razinama and all other properties remaining in her possession.

8. For the manovarti melchilavu (the monthly private and personal expenses) of the Plaintiff, she shall enjoy the six sivuthettu pangus, belonging to the zamindari, in Darmasanam Kannivayal village, Sivaganga zamindari segaram, with powers of alienation such as gift, exchange, sale, etc."

There is nothing else in the razinama which appears to be relevant.

It is this document which the respondent adduces as conclusive evidence that the four villages in question were freely dedicated to charity, that neither the plaintiff in the 1843 suit nor he, as claiming through her, had any beneficial interest therein, with the consequence already stated that he established his right to be deemed an agriculturist within the Act. This is the contention which the High Court has upheld.

Their Lordships cannot take the same view of the document. It must be observed that the origin of the charity is not to be found in it. That is clear from the reference to the "chatram which she is running at Ramnad." It cannot be inferred that the four villages had at an earlier date been dedicated to charity. All that can be gleaned from the document is that the plaintiff was at that date carrying on the chatram, and it was natural and proper that upon a division of the disputed zamindari such an appropriation should be made to her as would enable her to continue to do so. It appears to their Lordships that, while the language used may not be free from ambiguity, the more natural meaning to ascribe to it is that the four villages were to belong to the plaintiff but charged with the obligation of maintaining the charity which she had theretofore carried on. The words do not appear apt to impose a duty upon the plaintiff of devoting to charity the whole of the income of the villages however much it might exceed the requirements of the charity in fact maintained by her. There is, no doubt, force in the observation made by the High Court that, if a donor was making a gift of property burdened with the performance of a charity, one would expect to find that the charity was to be conducted according to a fixed dittam or standard of expenses after meeting which the surplus income was to be enjoyed by the donee. But it appears to be a sufficient answer to this point that the nature of the charity itself supplied a sufficient standard. The maintenance of a choultry for the feeding of travelling pilgrims would normally require a sum which varied from time to time and could not easily be defined in the terms of so many rupees a year no more and no less. It appears to their Lordships in accordance both with the probabilities of the case and with the language of the document to conclude that, an estimate being made of the probable expenses of the charity and of the income of the villages, an appropriation was upon the division of the zamindari made to the plaintiff which would enable her to carry on the charity but would leave her free to retain for her own use any surplus after that purpose had been satisfied. The alternative view is one that would involve a cy-pres application of the surplus to some other charitable purpose in the event of the income exceeding the needs of the particular charity. In the circumstances of the case there seems to be little justification for ascribing to the parties a general charitable intention which alone would justify such an application.

To this conclusion their Lordships come upon a consideration of the document which is now more than a hundred years old, but it is desirable to make some observations upon other aspects of the case.

The dispute being whether or not the respondent had a beneficial interest in the four villages, it is a strange course of events which leads to his repudiation of the view normally favourable to him. For he denies such a benefit with a view to a different advantage. This places an opponent, who would assert just that which the respondent might be expected to assert and would be in the best position to prove, in a position of peculiar difficulty. The exact nature of this charity has been discussed but not decided in other proceedings and it was said in Appeal No. 128 of 1922 in the course of a judgment in the High Court at Madras " Unless and until it is found in a regular suit instituted by someone interested in the Trust that the whole income is devoted to charity, the decree in the present suit must provide that the maintenance should be a charge on the surplus funds if any derived from these villages and the lower Court's decree must be amended in so far as it directed a charge on the villages themselves." The suit, in which this appeal has been brought, raises the precise question indicated in the cited judgment. It cannot but be regarded as unfortunate that the claim of the charity should now be vindicated by one whose conduct has not been consistent with that claim. Their Lordships agree with the High Court that, if the terms of the razinama of 1847 were unambiguous in favour of an entire dedication to charity, the diversion of any part of the income to other purposes by a trustee could be disregarded, but, holding as they do that the better construction of the deed is otherwise or that at the lowest there is an ambiguity, they cannot altogether ignore that the respondent who now advances the claim has hitherto not been vigilant in asserting it but on the contrary, as the learned Subordinate Judge has pointed out, has acted as if he had a beneficial interest in the surplus income. It must at least be said that for him it becomes difficult in his own interest to affirm what his previous conduct has denied.

It is, however, not only the conduct of the respondent himself which has been discussed in the Courts in India. The earlier history of the case between 1847 and the death of the respondent's father in or about 1920 has also been investigated and different views have been taken as to the inferences to be drawn from divers documents and transactions. Their Lordships have carefully considered these matters and it appears to them that they do not point decisively in favour of one view or the other. There are no doubt references which suggest a dedication of the entire income to charity: these are exhaustively examined in the careful judgment of the High Court. But in almost every case the language used would be equally appropriate, or at least not inappropriate, if the income was not wholly dedicated to, but only charged in favour of, charity, and it must not be forgotten that if in fact the whole income is at any time required for the charity, the two things are in effect the same. Nor would it be right to give much weight to expressions of doubtful import where the question now under consideration did not arise. One example out of many must suffice. In 1879 the question had arisen whether the charity was being properly maintained. A report appears to have been made by the Tahsildar of Ramnad Taluk. The Head Assistant Collector wrote a letter in regard to it and upon this letter the Vice-President of the District Board Madura wrote an endorsement which contained these words: " . . . the present trustee M. Muthuduraiswami Thevar seems to have been doing his best for the choultry in spite of the several inconveniences caused him by Kolanda Nachiar, his aunt. He will however it is hoped repair the second portions of the building, as there seems to be a good balance in favour of the choultry." This statement, assuming it to be admissible evidence against the respondent, is conclusive that there was a charity but it is of little significance upon the question whether after the needs of the charity have been satisfied the surplus belongs to him.

Their Lordships have thought it proper to refer to these matters, because, the High Court having taken a different view of the construction of the razinama, it would not be right to assume that it is free from ambiguity. But they do not find in the transactions or conduct of the parties whether more or less contemporaneous with the deed anything which would lead them to depart from the meaning which they themselves attach to it. They must conclude therefore that the respondent has not established that he is an agriculturist within the meaning of the Madras Act and as such entitled to relief. They will humbly advise His Majesty that this appeal should be allowed and the decision of the Subordinate Judge of the 25th July, 1938, restored. The respondent must pay the appellants' costs of this appeal and of the proceedings in the High Court.

(58170) Wt. 8013—20 160 8/47 D.L. G. 338

In the Privy Council

R.M.A.R.A. ADAIKAPPA CHETTIAR

v.

R. CHANDRASEKHARA THEVAR
alias SUNDARA PANDIA THEVAR

AND BETWEEN

R.M.A.R.A. ADAIKAPPA CHETTIAR
AND ANOTHER

v.

R. CHANDRASEKHARA THEVAR
alias SUNDARA PANDIA THEVAR

connected appeals (consolidated)

DELIVERED BY LORD SIMONDS

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

1947