

SUPREME COURT OF INDIA

Narayan Das Dwarka Das

Vs.

Bengorm

(B J Reddy and K Paripoornan JJ.)

09.10.1996

JUDGMENT

PARIPOORNAN.J.

1. Special leave granted.

2. The applicant in Original Petition No. 1 of 1976, Subordinate Judge's court, Kozhikode, filed the special leave petition. Respondents 1 and 2 in Original Petition No. 1 of 1976 are the respondents in the special leave petition. Pending the special leave petition, the applicant and the second respondent in Original Petition No. 1 of 1976 died. One Sunderdas Narayandas and Vijaya Narandas filed an application to get themselves impleaded as the legal representaives of the petitioner in the special leave petition. The said Sunderdas Naravandas, one of the heirs, also died on 5.7.1993. Stating these facts an application was made to implead the following persons as legal representatives:-

1. Rahul) 30/D, P.K.P. Layout (Upstairs)) Thadasam Road 4th Cross
2. Sachin) Coimbatore - 641 002
3. Vijaya Narayandas, New Road, West Hill, Calicut - 5 (Kerala).

The said application was allowed by this Court by order dated 22.7.1996. It was further brought to the notice of this Court at the time of hearing that the said persons are also the legal heirs of the second respondent. This is recorded.

3. We heard counsel.

4. This appeal is filed against the judgment of the High Court of Kerala, rendered in MFA No. 149 of 1983, dated 5th May, 1988. The original appellant filed Original Petition No. 1 of 1976 before Subordinate Judge's Court, Kozhikode under Section 15 of the Kerala Agriculturists Debt Relief Act, 1970 for full settlement of his debts. According to him, he has two items of immovable properties in Kerala shown in the schedule of the petition. They are situated in Kozhikode Taluk. Item one is residential property and item two is a Paramba, adjacent to it. The first respondent filed O.S. No. 488/83 before the Bombay High Court and obtained a decree against the original appellant. It was put in execution in the Kerala Court. The original appellant is liable to pay Rs.1,20,000/- to the first respondent and Rs.57,000/- to the second respondent. Stating that he is an agriculturist coming under the purview of the Kerala Act 11 of 1970, he prayed for full settlement of his debts as provided under Section 15 of the Act.

5. The application was allowed by the trial court by order dated 30.9.1982. The trial court found that the original appellant is an agriculturist within the meaning of Section 2(1) of the Act. The trial court further held that the appellant would be entitled to seek the benefit of the Act when the decree obtained by the first respondent in Bombay Court is put in execution in Kerala Court and there is no impediment for him to avail the benefits conferred by Section 15 of Act 11 of 1970.

6. In the appeal filed by the first respondent the High Court noticed the finding of the lower court that the original appellant is an agriculturist within the meaning of the Act and so he will be entitled to maintain the application under section 15 of the Act. It further found and, in our opinion, correctly, that there is no sufficient evidence on record to prove that there is any outstanding debt due to the second respondent. The sole debt was due to the first respondent (only). But in the opinion of the High Court, a debt which arose out of the suit filed in Bombay High Court and decree obtained from the said court on the basis of mortgage deed, executed by the original appellant, cannot be considered to be a debt within the meaning of Section 2(4) of the Act. On this basis, the High Court allowed the appeal filed by the first respondent and dismissed the application filed by the original appellant by judgment dated 5.5.1988. It is thereafter the original appellant filed the special leave and the above appeal has come up for hearing.

7. It is common ground that the trial court found that the appellant is an agriculturist within the meaning of the Act. It is further agreed that there is no sufficient evidence on record to prove that there is any outstanding debt due to the second respondent. The only debt that existed was owed to the first respondent.

8. Section 2(4) of the Kerala Agriculturists' Debt Relief Act, 1970 is to the following effect:-

Section 2 (4) :-

"(4) "debt" means any liability in cash or kind, whether secured or unsecured, due from or incurred by an agriculturist on or before the commencement of this Act, whether payable under a contract, or under a decree or order of any court, or otherwise, but does not include...."

The High Court has not found that the instant debt is one covered by the exception specified in section 2 (4) of the Act. Nonetheless the High Court has taken the view that a decree obtained from the Bombay court on a mortgage deed executed by the original appellant cannot be considered as a

debt within the meaning of Section 2(4) of the Act. No basis or reason has been given to reach such a conclusion. That is a vital aspect to be considered in the case. Insofar as the High Court has not considered the matter in a proper perspective and has also failed to state the basis or reasons to hold that the debt in the instant case cannot be considered to be one coming within the purview of Section 2 (4) of the Act, we are constrained to set aside the Judgment of the High Court. We hereby do so. The matter is remitted to the High Court to restore the appeal in MFA No. 149/83 to its file and dispose of the same in accordance with law. The appeal is allowed. There shall be no order as to costs.