

(1959) 12 KL CK 0029

High Court Of Kerala

Case No: A.S. No. 938 of 1959

Amarnatha Menon

APPELLANT

Vs

Malathy Amma

RESPONDENT

Date of Decision: Dec. 3, 1959

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2
- Transfer of Property Act, 1882 - Section 55, 55(4)

Citation: (1960) KLJ 36

Hon'ble Judges: T.K. Joseph, J; M.S. Menon, J

Bench: Division Bench

Advocate: K.P. Pathrose and Joseph Thaliyath, for the Appellant; T. Chandrasekhara Menon, for the Respondent

Final Decision: Dismissed

Judgement

Joseph, J.

The only point for decision is whether the debt covered by the decree is one to which the Kerala Agriculturists Debt Relief Act (XXXI of 1958) applies. The court below held against the debtor on this point and dismissed his application to pay the debt according to the Act; hence this appeal. The amount in respect of which the decree was passed was balance of consideration under a sale deed executed by the decree-holder in favour of the judgment-debtor. Section 2(c) of the Act defines "debt" for the purpose of the Act. Eight categories of debts are excluded from the operation of the Act and clause vii of section 2(c) provides that "any liability" for which a charge is provided under sub-clause (b) of clause 4 of section 55 of the Transfer of Property Act will not come within the definition of the word "debt." The question is whether the debt covered by the decree comes within this clause. Learned counsel for the appellant contends that the provision in the sale deed enabling the vendor to sue for interest on the balance of consideration is "a contract to the contrary" as contemplated in section 55 of the T.P. Act. We are unable to

uphold this contention. The sale deed expressly provides for a charge on the property sold in respect of the unpaid consideration. This is a contract in consonance with and not contrary to section 55. It is argued that section 55 contemplates a consolidated charge for the principal and interest and that the provision in the deed for suing for interest alone would amount to "a contract to the contrary." The clause in the sale deed is one intended to get over the bar of rule 2 of Order II of the CPC and this cannot affect the existence of the charge. Provisions for the enforcement of a charge created by the sale cannot in our opinion amount to a contract to the contrary.

2. Another argument advanced by the appellant's counsel is that after the first suit for recovery of interest, the charge could not subsist on the property and that there was no charge on the date the Act came into force. Even assuming that this argument is correct, we do not see how it can help the appellant in view of the provisions in section 2(c)(vii) which only requires that a charge should be created as provided by section 55(4) of the T.P. Act. That such a charge was created by the sale is not disputed. In construing an analogous provision in the Madras Agriculturists Debt Relief Act, the Madras High Court held in M. Varadaraja Perumal Pillai and Another Vs. Palanimuthu Goundan, that the intention of the legislature was only to specify the category of cases to which the Act was not to apply and that the exclusion of such categories of debt was not to depend on the subsistence of the charge but on the question whether in the beginning the liability was one falling within the category. We are in complete agreement with this view. It follows that even if the charge was not subsisting on the relevant date, the debt would stand excluded from the operation of the Act. No other point arises in this appeal. We therefore confirm the order of the court below and dismiss the appeal. We make no order as to costs.