

## APPELLATE CIVIL.

*Before Mr. Justice Wadsworth.*

V. PONNAMBALAM CHETTI AND TWO OTHERS  
(APPELLANTS IN SECOND APPEAL NO. 358 OF 1934),  
PETITIONERS,

1939,  
March 13.

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*v.*

AMBALAM RAMAN CHETTI AND THREE OTHERS  
(RESPONDENTS IN THE ABOVE SECOND APPEAL),  
RESPONDENTS.\*

*Madras Agriculturists Relief Act (IV of 1938), sec. 4 (d)—*  
*“House property” within—Land earmarked for building*  
*purposes, but unoccupied by any buildings, if.*

“House property” in section 4 (d) of the Madras Agriculturists Relief Act (IV of 1938) does not include land earmarked for building purposes, but unoccupied by any buildings. Even if the land is suitable for building purposes and there is an intention to build houses upon it, it could not be considered to be “house property” until building operations had, at any rate, started.

PETITION praying that in the circumstances stated in the affidavit filed therewith the High Court will be pleased to apply the provisions of the Madras Agriculturists Relief Act of 1938 and scale down the debt in favour of the petitioners herein before issuing a decree in Second Appeal No. 358 of 1934 preferred to the High Court against the decree of the District Court of Ramnad at Madura in Appeal Suit No. 361 of 1932 in Original Suit No. 288 of 1931, District Munsif's Court, Paramakudi.

*A. S. Srinivasa Ayyar* for petitioners.

*V. Ramaswami Ayyar* for respondents.

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\* Civil Miscellaneous Petition No. 4070 of 1938 in Second Appeal No. 358 of 1934.

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## ORDER.

WADSWORTH J.—The question in this petition is whether defendants are entitled to the benefits of the Madras Agriculturists Relief Act. It has been found by the learned District Munsif from whom a report was obtained, that the defendants have not been assessed to property tax on an aggregate annual rental value of Rs. 600 and that therefore proviso (C) to section 3 of the Act does not apply to them.

The remaining question is whether the mortgage in respect of which the decree was passed comes within section 4 (d) of the Act, that is to say, whether it is a debt contracted on the security of house property alone in a municipality. The relevant clause of the mortgage-deed recites certain boundaries within which the one-fourth share of two items is conveyed. The first item is a vacant site (kalimanai nilam) in the south-western side, its measurements being recited, and the second item is another site with a shop building thereon in the north-western side of the area within the boundaries. The question is whether the first item, i.e., the vacant site in the south-western side of this area, can be termed "house property". If it can, then the mortgage is a debt contracted on the security of house property alone within a municipality. If it cannot, then the inclusion of this piece of unoccupied land within the mortgage takes the debt out of the exception recited in section 4 (d) and the debt as a whole comes within the mischief of the Act. It is well established that the term "house" includes the land appurtenant to the house and necessary for its enjoyment. The case law on the subject is summarized in a Calcutta ruling, *Khirode Chandra v. Saroda Prosad*(1).

It is contended that the term "house property" is a wider term than the term "house" and that it will include not only land appurtenant to a house which is in existence, but also land earmarked for house building purposes. I doubt very much whether this contention is in accordance with ordinary English usage. When we speak of house property, we certainly include buildings of all kinds and the sites thereof. We should probably also include the gardens, compounds and yards attached thereto. But I doubt whether the ordinary connotation of the term "house property" in every-day language would include land earmarked for building purposes, but unoccupied by any buildings. After all, it is a common experience to see agricultural land advertised for building or even sold for building, but used for agriculture until it is actually converted for the purpose for which it is destined. To my mind, one would not in ordinary English speak of agricultural land as house property merely because the owner thereof is trying to sell it or has sold it to a speculative builder. Granted that the land is suitable for building houses and that there is an intention to build houses upon it, I do not think that it would be considered to be "house property" until building operations had, at any rate, started. The alternative line of argument is that this site, item 1, is included in a larger plot with certain boundaries and is adjacent to a site upon which there was actually a building at the time when the deed was executed. It is contended that the building and its site and the vacant site adjacent to it must be deemed to be a single unit and that the whole will fall within the term "house property". Now, if in fact these two sites were a single unit, there would, I think, be some substance in this argument. But all the materials

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PONNAMBALAM available go to show that this is not the fact and that  
RAMAN. the house and its site on the north-western side were  
WADSWORTH J. treated as a separate unit, separately recited in the  
mortgage deed, separately assessed in the union  
registers and separately numbered for the purpose of  
assessment. There is nothing to show that the  
vacant site in the south-western corner was treated  
as part of the property upon which the house stands.  
The fact seems to be that the two plots had been  
separately demarcated; in one of them at the time  
when this mortgage was executed a house had been  
built, the other was destined for building purposes  
but was still vacant. In fact a house, I am told,  
has been constructed since the mortgage came into  
force. This fact alone is an indication that the vacant  
site was not at the time of the mortgage a part of the  
compound of the existing house. If, as seems to be  
the case, it was a separate unit, a piece of land with no  
building upon it, though destined for building purposes,  
it would not, in my opinion, be properly described as  
house property and the inclusion of this site is therefore  
sufficient to prevent this mortgage from being immune  
from the operation of the Agriculturists Relief Act.

I find therefore that the petitioners (judgment-debtors) are entitled to have the decree scaled down in accordance with section 8 of the Act, the mortgage being one of 1924. The decree will therefore be amended accordingly. The petitioners will be entitled to their costs in this petition.

V.V.C.

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