

NĀTARAJA
v.
SUBBAROYA.

the respondent was lawfully adopted by Vasavambal Ammal and that as the property in suit belongs to her estate the respondent is entitled to possession of it. My learned brother shares this view and the appeal will therefore be dismissed with costs. We certify for two Counsel.

G.R.

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Stodart.

1939,
January 12.

RENTALA GANGA RAJU (FIRST APPELLANT—
PETITIONER), PETITIONER,

v.

BIKKINA BULLI RAMAYYA AND TWO OTHERS (RESPONDENTS—RESPONDENTS), RESPONDENTS.*

Madras Agriculturists Relief Act (IV of 1938), sec. 19—Mortgage decree passed by lower Court and confirmed by High Court on appeal—Scaling down of decree debt and amendment of decree in case of—Application for—Court to which it must be made.

In a case in which a mortgage decree passed by the lower Court was confirmed by the High Court on appeal, an application under section 19 of the Madras Agriculturists Relief Act (IV of 1938) to scale down the decree debt and amend the decree was made to the lower Court.

Held that the application was properly made to the lower Court (the Court of first instance) and that that Court had jurisdiction to deal with the application.

Sections 19 and 20 of the Madras Agriculturists Relief Act should be read together and the explanation of the expression

* Civil Miscellaneous Petition No. 5016 of 1938 and Civil Revision Petition No. 26 of 1939.

“ Court which passed the decree ” in section 20 equally applies to section 19.

GANGA RA
v.
RAMAYYA.

PETITION under section 19 of Madras Act IV of 1938, praying that, in the circumstances stated therein, the High Court will be pleased to scale down the debt due under the decree in Appeal No. 173 of 1926 on the file of the High Court (Original Suit No. 60 of 1923 on the file of the Court of the Subordinate Judge of Rajahmundry) according to section 8 (1) of the said Act and petition under section 115 of Act V of 1908, praying the High Court to revise the order of the Court of the Subordinate Judge of Rajahmundry, dated 5th October 1938 and made in Interlocutory Application No. 224 of 1938 in Original Suit No. 60 of 1923.

P. V. Vallabhacharyulu for petitioner.

A. Satyanarayana for respondents.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by MADHAVAN NAIR J.—The 39th defendant in Original Suit No. 60 of 1923 on the file of the Subordinate Judge of Rajahmundry is the petitioner before us. In that case a mortgage decree was passed against the petitioner and others, and that decree was appealed against to this Court. The appeal was dismissed on 13th February 1936.

MADHAVAN
NAIR J.

When the decree-holder sought to execute the decree, the proceedings were got stayed by the petitioner on 29th September 1938 by an application under section 20 of Madras Act IV of 1938 (The Madras Agriculturists Relief Act); and on 14th April 1938 he filed an application under section 19 of the said Act praying for the scaling down of the decree debt and amendment of the decree accordingly. This

GANGA RAJU
v.
RAMAYYA,
—
MADHAVAN
NAIR J.

application was filed in the lower Court within the period mentioned in section 20 of the Act. But that Court held that it had no jurisdiction to deal with the application and returned the petition for presentation to the proper Court.

The petition has therefore been presented to this Court, and a civil revision petition has also been filed by the petitioner to revise the order of the lower Court. Section 20 says that the application for relief under section 19 should be made "to the Court which passed the decree" within sixty days after the application for stay has been granted. That period has now elapsed and the respondent, the decree-holder, takes the objection that the petition under section 19 presented to this Court is barred by time. If the lower Court has jurisdiction to entertain the application under section 19, then the question of limitation does not arise because the application before it was presented in time. The question therefore for our consideration is whether the lower Court had jurisdiction to entertain this application under section 19 of the Madras Agriculturists Relief Act.

The lower Court arrived at the conclusion that it had no jurisdiction on the following reasoning. It stated :

"If really the Legislature thought that the application under section 19 should be made to the Court of first instance only, it would have expressly said so under section 19 by way of explanation as it did under section 20 of the Act. That suggests that the Legislature did not contemplate any change in the general principle so far as section 19 is concerned"—

the general principle being, as is stated in the earlier part of the judgment, that

"after the lower Court's decree had been confirmed or modified by the appellate Court the jurisdiction of the lower Court to amend the decree ceases".

We cannot accept this reasoning. It is true that section 19 of the Act does not explain the expression "Court which passed the decree". Section 20 of the Act says in its explanation that "the Court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1908. Section 37, Civil Procedure Code, says :

"The expression 'Court which passed a decree,' or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include, (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction the Court of first instance".

In the present case the reference to the "Court which passed the decree" in section 20 of the Madras Agriculturists Relief Act is, by its explanation, to the Court of first instance, that is, the Court to which the petitioner made his application. A perusal of the two sections, 19 and 20, shows clearly that they have to be read together. Section 19 says :

"Where, before the commencement of this Act, a Court has passed a decree for the repayment of a debt, it shall . . .
 . amend the decree."

Under this section, application has to be made to the Court which has passed the decree and it has jurisdiction to amend the decree in a proper case. No doubt it does not use the exact expression "Court which passed the decree", but it says that where a Court has passed a decree it will have jurisdiction to amend it. Section 20 makes it clear that the Court contemplated in section 19 is the Court which passed the decree, for it says that the executing Court shall, on application, stay the proceedings

"until the Court which passed the decree has passed orders on an application made under section 19"

GANGA RAJU
 v.
 RAMAYYA.
 ———
 MADHAVAN
 NAIR J.

GANGA RAJU
v.
RAMAYYA.
—
MADHAVAN
NAIR J.

and which that Court is, is explained in that section to mean the Court of first instance. We have no doubt that sections 19 and 20 of the Madras Agriculturists Relief Act should be read together and the explanation of the expression "Court which passed the decree" in section 20 equally applies to section 19. The petitioner's application to scale down the decree debt and amend the decree was in our opinion properly made to the Court of first instance and that Court had jurisdiction to deal with that application. We therefore set aside the order of the lower Court and remand the application to it for disposal according to law after considering the merits. Though the respondent did not seriously contest the application, we think the petitioner is entitled to the costs of the civil revision petition in this Court. The other costs will be provided for in the order of the lower Court.

A.S.V.
