APPELLATE CIVIL.

Before Mr. Justice Wadsworth and Mr. Justice Patanjali Sastri.

1940, April 26.

VENDOOR THAZHATH PARAVAN *alias* CHERIAD AND ANOTHER (RESPONDENTS—DECREE-HOLDERS), PETITIONERS,

v.

VENTHRAYIL TARWAD KARNAVAN GOPALAN NAIR (PETITIONER—JUDGMENT-DEBTOR), RESPONDENT.*

Madras Agriculturists Relief Act (IV of 1938) ss. 8 and 9—Purchase money paid under abortive sale—Decree for refund with interest—Interest awarded as damages—If could be scaled down under the Act—Debt when incurred—Principles of scaling down under the sections.

A suit for recovery of the purchase money paid under an abortive sale is a suit for money had and received to the plaintiff's account and the basis of such a suit is an implied or imputed contract. Where in such a suit a decree is passed subsequent to 1st October 1932 in respect of a sale made and purchase money paid before that date for refund of the purchase money together with interest thereon from the date of its payment, the amount of the decree including interest is liable to be scaled down under the provisions of section 8 of the Madras Agriculturists Relief Act and not under those of section 9 of the Act. In a sale which fails *ab initio* for want of consideration the liability of the vendee to refund the purchase money arises on the date when he receives the amount.

The fact that interest is awarded by Court as damages does not exclude the operation of the provisions of the Madras Agriculturists Relief Act. Whatever the nature of the liability to pay the principal sum, whether it originates in contract or in tort, the compensation awarded for wrongful

* Civil Revision Petition No. 95 of 1939.

withholding of its payment is "interest" within the meaning of the Act and is liable to be scaled down thereunder.

Mottai Meera v. *Abdul Kadir*(1), explained and distinguished.

Hanuman Kamat v. *Hanuman Mandu*(2), applied and followed.

PETITION under section 25 of Act IX of 1887, praying the High Court to revise the order of the Court of the Subordinate Judge of South Malabar at Calicut dated 3rd September 1938 and made in Original Petition No. 20 of 1938 in Small Cause Suit No. 432 of 1934.

N.R. Sesha Ayyar for petitioners.

T.K. Raman Nambisan for respondent.

Cur. adv. vult.

The JUDGMENT of the Court was delivered by PATANJALI SASTRI J.—This is a petition to revise the order of the Court of the Subordinate Judge of South Malabar amending the decree obtained by the petitioner in Small Cause Suit No. 432 of 1934 on the file of that Court, under section 19 of the Madras Agriculturists Relief Act, 1938.

The respondent sold some trees to the petitioner on 29th September 1931 for Rs. 400 but before the petitioner could cut and carry them away, a third party successfully asserted a paramount claim to them and the sale to the petitioner therefore failed to take effect. The petitioner thereupon sued for the recovery of the amount of Rs. 400 "with interest at twenty-four per cent per annum from 29th September 1931". The Court, however, allowed interest at twelve per cent only and passed a decree for Rs. 538-5-3 for principal and interest till 20th August 1934, the

(1) I.L.R. [1939] Mad. 525. (2) (1891) I.L.R. 19 Cal. 123 (P.C.).

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date of the suit and Rs. 94–9–4 on account of costs with further interest at six per cent on the aggregate amount from 4th November 1936 the date of the decree. The respondent applied to the Court below under section 19 of the Act claiming to be an agriculturist for scaling down the decree debt aforesaid in accordance with the provisions of the Act. There is no dispute that the respondent is an agriculturist as defined by section 3 (ii) of the Act. But it was contended for the petitioner that there was no relationship of debtor and creditor created between the parties when the sum of Rs. 400 was paid by the petitioner as the price of the trees, that no interest was payable on that sum, and the Court having allowed interest only as damages, it was not "interest" which could be scaled down under the Act. It was said therefore that the only relief that the respondent would be properly entitled to was under section 9 of the Act in respect of the interest that was payable from the date of the decree, namely, 4th November 1936. Alternatively, it was also urged that section 8 was not in any case applicable as the liability in question must be deemed to have been incurred only when the consideration for the sale failed, that is to say, when the third party claiming paramount title to the trees successfully prevented the petitioner from cutting and carrying them away by obtaining an injunction from the Court, which was admittedly some time after 1st October 1932; so that even assuming that the interest awarded under the decree prior to the date of suit was liable to be scaled down under the Act, it should be scaled down in accordance with the provisions of section 9 and not section 8. We are of opinion that both these contentions are unsustainable.

Learned Counsel urged that no interest would be payable under the law in respect of the plaintiff's claim for refund of the purchase money and the liability to pay the sum awarded as interest arose only on the date of the decree. It is unnecessary, in our view, to consider whether interest could be awarded on a claim for recovery of purchase money where a contract of purchase fails to take effect, as in this case a decree has been passed awarding interest and it is no longer open to the petitioner to question such award. It must therefore be taken that the petitioner's claim for the purchase money was a claim in respect of which interest was payable. The fact that the Court awarded interest as "damages" cannot, in our opinion, exclude the operation of the provisions of the Act. The Act nowhere defines "interest" and it must be remembered that "interest" is sometimes payable even where there is no agreement to pay it. The Interest Act provides for "interest" being allowed, subject to certain conditions, as damages for wrongful withholding of payment of sums due, and illustrations (*n*) and (*r*) to section 73 of the Indian Contract Act contemplate "interest" being awarded as compensation for loss or damage caused by a breach of contract in certain cases. It seems to us, therefore, clear that whatever be the nature of the liability to pay the principal sum, whether it originates in contract or in tort, the compensation awarded for wrongful withholding of its payment can appropriately be regarded as "interest" and is thus liable to be scaled down under the Act.

The petitioner's learned Counsel cited *Mottai Meera* v. *Abdul Kadir*(1) as being contrary to this view. We are however clear that the case has no bearing on

(1) I.L.R. [1939] Mad. 525.

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the question we are now considering. That was a case where a co-owner in possession of common funds had realised interest by their investment, and in a suit for partition he was directed to pay to the other co-owners their shares of such funds including the interest earned. An application having been made for relief under Act IV of 1938, the Court held that the liability enforced by the decree was not a "debt" within the meaning of the Act. It was pointed out that the interest awarded in such cases could be regarded either as an accretion to the fund liable to be divided or compensation for breach of trust payable under section 23, read with sections 90 and 95, of the Trusts Act, the application of Act IV of 1938 being excluded in either case. It is obvious that the position here is entirely different. The petitioner's suit for recovery of the purchase money paid under an abortive sale was one for money had and received to his account; see *Hanuman Kamat* v. *Hanuman Mandur*(1); and it cannot be disputed that the basis of such an action is an implied or imputed contract, at all events in circumstances like those of the present case which plainly exclude any hypothesis of tort or trust. The decision cited has therefore no application here.

As regards the alternative contention that section 8 does not apply to this case because the liability to refund the price must be held to have arisen only after 1st October 1932 when an injunction was obtained against the petitioner, it is to be observed that this is not a case where the petitioner got anything under the sale of which he was subsequently deprived. It is not denied that before the petitioner could cut any of the trees, the person

(1) (1891) I.L.R. 19 Cal. 123, 126 (P.C.).

claiming paramount title intervened and successfully prevented the petitioner from doing so by obtaining an injunction from Court. The case is thus one where there never was any consideration and the sale failed *ab initio*. The liability to refund the purchase money therefore arose when it was received by the respondent, i.e., on 29th September 1931 [see *Hanuman Kamat* v. *Hanuman Mandur*(1) already referred to] and falls under section 8 of the Act.

The revision petition is dismissed with costs.

V.V.C.

APPELLATE CRIMINAL.

Before Mr. Justice Lakshmana Rao.

PUBLIC PROSECUTOR, APPELLANT,

v.

CHELLIAH TEVAN AND ANOTHER (ACCUSED), RESPONDENTS. *

1940, August 9.

Madras Borstal Schools Act (V of 1926), sec. 7—Sub-Magistrate submitting proceedings under sec. 7 (1) with opinion that it is proper to detain the convicted persons in a Borstal School—Powers of Joint Magistrate under sec. 7 (2).

Where a Sub Magistrate, under section 7 (1) of the Madras Borstal Schools Act (V of 1926), submitted the proceedings in a case to the Joint Magistrate to whom he was subordinate, with his opinion that the respondents, who were adolescent offenders, were proper persons to be detained in a Borstal School, and the Joint Magistrate acquitted them,

(1) (1891) I.L.R. 19 Cal. 123 (P.C.).

* Criminal Appeal No. 172 of 1940.