

(1986) 12 MAD CK 0031
In the Madras High Court

Angappa Gounder

APPELLANT

Vs

Sivanmalai Gounder and Others

RESPONDENT

Date of Decision : 03-12-1986

Acts Referred:

Citation : (1987) 100 LW 721 : (1988) 2 MLJ 225

Hon'ble Judges : Sengottuvelan, J

Bench : Division Bench

Judgement

Sengottuvelan, J.—In view of conflict of decisions noted by Swamikannu, J., regarding the validity of pre-existing mortgages on the passing of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963, hereinafter referred to as the Act, this matter is referred to this Bench for authoritative pronouncement.

2. The facts of the case are briefly as follows: On 4.8.1943 one Karuppanna Gounder and his son Palanisamy Gounder usufructually mortgaged the suit properties in favour of one Muthusamy Gounder and three others. In lieu of interest, the mortgagees were allowed to enjoy the land for a term of five years. The mortgagees agreed to receive the mortgage amount and deliver possession of the properties to the mortgagor after the expiry of the term. While so, one Valliammal, the wife of Palanisamy Gounder of Sangarupalayam, obtained an assignment of the abovesaid mortgage on 7.6.1946. She had in turn assigned the mortgage in favour of the appellant, the first defendant in suit, on 12.6.1959. Accordingly, the appellant is in possession of the mortgaged properties. Palanisamy Gounder, one of the mortgagors sold his share to the 7th respondent herein (5th defendant in the suit) and hence the 7th respondent herein is entitled to a half share in the mortgage properties. The other mortgagor Karuppanna Gounder died in 1957 leaving one Karuppayee and Chellammal as his heirs. Karuppayee died leaving her husband, the first respondent herein and her sons, the second and third respondents herein.

3. On the date of the suit the appellant was entitled to one-fourth share in the

mortgage properties and the respondents 4 to 6 were entitled to another one-fourth share and the 7th respondent was entitled to half share. The respondents 1 to 3 herein, as the successors-in-interest of the mortgagors filed the suit O.S.No. 130 of 1975 on the file of the District Munsif of Dharapuram, for redemption of the mortgage properties and consequently for possession and mesne profits. The appellant herein, viz., the first defendant, raised a contention that in view of passing of Act 30 of 1963 the mortgage itself is wiped out and the respondents 1 to 3 have no right to file the suit for redemption. A contention was also raised regarding the alleged improvements made by the appellant. The further contention raised was with reference to the non-joinder of one Palanisamy Gounder, the son of the original mortgagor. The trial court negated the contentions of the appellant and passed preliminary decree for redemption as prayed for also relegated the claim for mesne profits to proceedings under Order 20, Rule 12, C.P.C. As against the judgment of the trial court, the appellant herein filed an appeal in A.S.No. 123 of 1978 on the file of the District Judge of Coimbatore (East) at Erode and the learned District Judge also concurred with the findings of the trial Court and dismissed the appeal. This second appeal is filed challenging the legality and correctness of the judgment of the District Judge in A.S.No. 123 of 1978. When the matter was originally taken up before Swamikkannu J., he noticed conflict of decisions regarding the questions to be decided and hence the matter is referred to this Bench of this Court for an authoritative pronouncement.

4. The point that arise for decision is whether the provisions contained in Act 30 of 1963 will result in wiping out the suit mortgage and thereby render the suit as one not maintainable in law.

5. At the outset it has to be stated that the properties in question are minor inams. The Inam tenure had been abolished by the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act 30 of 1963 and converted into Ryotwari tenure. According to Section 3 of the Act all minor inams vest in the Government from the appointed date and any rights and privileges which may have accrued in the minor inam to any person before the appointed day against the inamdar shall cease and determine and shall not be enforceable against the Government. Section 3 of the Act is as follows:

3. Vesting of minor inams, etc., in Government - With effect on and from the appointed day and save as otherwise expressly provided in this Act.

(a) Clause (b) of Sub-section (1) and Sub-section (2) of Section 17 of the Abolition Act and Clause (b) of Sub-section (1) and Sub-section (2) of Section 14 of the Inam Estates Abolition Act, Sections 2 and 12 of the Madras City Land Revenue Act, 1851 (Central Act XII of 1851), the Pudukkottai (Settlement of Inams) Act, 1955 (Madras Act XXIII of 1955) Section 22 of the Madras (Transferred Territory) Incorporated and Unincorporated Devaswoms Act, 1959 (Madras Act 30 of 1959), Clause (i) of Section 3 of the Madras (Transferred Territory) Ryotwari Settlement Act, 1964, the Service Inams Proclamation, dated

the 13th May, 1893, and all other enactments applicate to minor inams as such shall be deemed to have been repealed in their application to minor inams:

(b) every minor inam including all communal lands and porambokes, waste lands, pasture lands, forests, mines and minerals, quarries, rivers and streams, tanks and irrigation works, fisheries and ferries, situated within the boundaries thereof, shall stand transferred to the Government and vest in them free of all encumbrances, and the Madras City Land Revenue Act, 1851 (Central Act XII of 1851) except Sections 2 and 12, the Madras City Land Revenue (Amendment) Act, 1867 (Madras Act VI of 1867), the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864), the Madras Irrigation Cess Act, 1865 (Madras Act VII of 1865), the Madras (Transferred Territory) Ryotwari Settlement Act, 1964, and all other enactments applicable to ryotwari lands shall apply to the minor inam;

(c) all rights and interests created by the inamdar in or over his inam before the appointed day, shall, as against the Government, cease and determine;

(d) the Government may, after removing any obstruction that maybe offered, forthwith take possession of the minor inam and all accounts, registers, pattas, muchilikas, maps, plans and other documents relating to the minor inams which the Government may require for the administration thereof:

Provided that the Government shall not dispossess any person who is personally cultivating any land in the minor inam, until the Assistant settlement Officer and the Tribunal and the Special Appellate Tribunal, on appeal, if any, decide that such person is not actually entitled to ryotwari patta in respect of that land under the provisions of the Act.

Explanation: For the purposes of this proviso, a person is said to personally cultivate a land when he contributes his own physical labour or that of the members of his family in the cultivation of that land;

(e) the inamdar and any other person whose rights stand transferred under Clause (b) or cease and determine under Clause (c) shall be entitled only to such rights and privileges as are recognised or conferred on him by or under this Act;

(f) the rights and obligations of the inamdar as such shall be extinguished;

(g) any rights and privileges which may have accrued in the minor inam to any person before the appointed day against the inamdar shall cease and determine and shall not be enforceable against the Government or against the inamdar, and every such person shall be entitled only to such rights and privileges as are recognised or conferred on him, by or under this Act.

Based on the above section it is contended that since the mortgage property in this case is a minor inam which as a result of the notification under the Act stood transferred to the Government and had vested in the Government free of all encumbrance, the rights under the usufructuary mortgage had ceased and the rights of the mortgagor stand terminated.

6. Section 3(b) of Act 30 of 1963 is similar to Section 3(b) of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948. Section 3(b) of Act 26 of 1948 is as follows:

3(b) the entire estate (including all communal lands and porambokes; other non-ryoti lands; waste lands; pasture lands, lanka lands; forests; mines and minerals; quarries; rivers and streams; tanks and irrigation works; fisheries; and ferries), shall stand transferred to the Government and vest in them, free of all encumbrances and the Madras Revenue Recovery Act, 1864, the Madras Irrigation Cess Act, 1865, and all other enactments applicable to ryotwari areas shall apply to the estates

A Division Bench of this Court in the case reported in S.K.M. Muhammed Mustafa Marakayar Vs. Udayanachiammal and Others, , had occasion to interpret Section 3(b) of the Act 26 of 1948 relating to vesting of estates in the Government, which is similar to Section 3(b) of the Act 30 of 1963. In the course of the Judgment the Division Bench observed as follows:

The vesting u/s 3(b) of the Act free of all encumbrances does not have the effect of destroying the debt enforceable against the land holder, but leaves the liabilities as between the creditor and the debtor intact, and the Act touches the debt only in so far as it affects the Government both in relation to the vesting pursuant to the notification and to the payment of compensation. That being the case, the contention cannot be accepted that interest comes to a stop in toto from the date of deposit of compensation u/s 54-A. There is no reason why the Act, having regard to its declared policy and intention, should deprive a creditor of interest as stipulated in the contract.

This conclusion was arrived at on the reasoning that in respect of pannai or private lands for which the land holder is entitled to Ryotwari patta under the provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act 26 of 1948 and in respect of which patta was granted can be proceeded against as a substituted security. In the course of the judgment the Division Bench also quoted with approval a Full Bench decision of the Patna High Court in the case reported in Sidheshwar Prasad Singh and Others Vs. Ram Saroop Singh and Others, wherein the Full Bench of the Patna High Court while considering the provisions contained in Bihar Land Reforms Act 30 of 1950 observed as follows:

The object of the enactment was not to destroy the mortgage altogether in all cases and to deprive the mortgagee of his right to recover the mortgage debt by sale of the lands which have not vested in the State. Where the entire estate is mortgaged and where that estate vests in the State and no interest in that estate is left with the mortgagor landlord, it is plain that the mortgagee is debarred u/s 4(d) from realising his mortgage debt from the property that has vested in the State. In such a case he cannot also enforce the mortgage security against the other property of the mortgagor that has not vested in the State. The position, however, is entirely different where the entire interest of the mortgagor landlord

in the estate does not vest in the State, but by virtue of Section 6 read with Section 4 of the Bihar Act some interests in the bakasht land are left with the mortgagor landlord. The mortgagee is entitled to follow that property, namely bakasht lands, and enforce the mortgage security against that property, on the ground of accession to the mortgaged property, if not, on the ground of substituted security. The bakasht lands which are deemed to be settled with the intermediaries after the vesting of the estate constitute an accession to the mortgaged property, with the result that the mortgage can proceed against such lands for satisfaction of the mortgage debt....

The vesting of the estate has not the effect of destroying the mortgage. Only, it does not operate on the property which has vested. It is enforceable against the non-vested property.

This Full Bench decision of the Patna High Court was reversed by the Supreme Court in the case reported in Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, . In that case the Supreme Court held as follows:

After the vesting of the estate of an intermediary in the State under the provisions of the Act, a mortgagee decree holder (who had obtained his mortgaged decree before the vesting) in respect of the mortgaged property which was an "estate" within the meaning of the Act and which included both bakasht and as well as other lands has to proceed exclusively u/s 14 of the Act. He cannot proceed with the execution of the decree against the bakasht lands of the judgment-debtor in his possession by virtue of "deemed settlement" u/s 6 of the Act....

All Estates notified u/s 3 vest in the State free of all encumbrances the quondam proprietors and tenure holders of those Estates lose all interests in those Estates. As proprietors they retain no interest in respect of them whatsoever. But in respect of the lands enumerated in Section 6 the State settled on them the rights of raiyats. Though in fact the vesting of the Estates and deemed settlement of raiyat's rights in respect of certain classes of lands included in the Estates took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the Estates in the State absolutely, and free of all encumbrances. Then followed the deemed settlement by the State of raiyat's right on the quondam proprietors. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within Section 6.

Relying on this decision of the Supreme Court it is contended on behalf of the appellant that the decision of the Division Bench of this Court reported in S.K.M. Muhammed Mustafa Marakayar Vs. Udayanachiammal and Others, is no longer good law and cannot be applied to the present case as was done by the Courts below.

7. Before proceeding to consider this contention we will do well to understand the significance of the relevant enactments. The Madras Estates (Abolition and,

Conversion into Ryotwari) Act, 1948 and the Bihar Land Reforms Act (Act 30 of 1950) were enacted to abolish the estates and put an end to the rights of the zamindar or the landholder who previously enjoyed the right to collect the melwaram from the ryoti lands. The right to collect the melwaram or the assessment was the exclusive right of the sovereign. When the British occupied this country, they had to rely upon a chosen few for the purpose of collecting the Melwaram and to sustain their dominion over this country. They conceded the right to collect the melwaram or the assessment to chosen individuals in return for an annual payment or peiskush. It is this class of middlemen the above said two enactments sought to abolish. The land holders had a saleable interest in the estates which enabled them to create mortgages over the same. Once the right to collect the assessment is put an end to by law, and when such a right is vested with the Government then nothing survives except the compensation computed under the provisions of the Act. Hence the Supreme Court in the case reported in Shivashankar Prasad Shah and Others Vs. Baikunth Nath Singh and Others, , held that after the vesting in the Government of an estate under the Bihar Land Reforms Act the rights of the mortgagee is extinguished.

8. But the Minor Inams Abolition and Conversion into Ryotwari Act (Act 30 of 1963) stands on a different footing. Inams were granted by sovereigns for religious and charitable purposes. In some cases the Inam comprised of right to collect the assessment in a particular village, and the same is termed as an Inam Estate. In some cases it comprised of land free of assessment which is called Iruvaram Inam Lands. Inam which comprised of Iruvaram lands, which do. not fall in the category of Inam Estates are called Minor Inams. Such minor Inams were alienated indiscriminately by the Inamdars and the purpose of the grant was not achieved. There were difficulties in resuming the Inam by the Government on account of long possession by the alienees and the rights flowing from such long possession. Hence the Legislature thought fit to recognise the possessory right acquired and to impose a ryotwari assessment on such lands. Act 30 of 1963 was enacted not with view to take over the entire interest but only for the purpose of abolishing the Inam tenure and convert the same into Ryotwari tenure. The result is the assessment is levied on the lands and the right vested in the person in possession is recognised. The rights of a ryot who is in enjoyment of a minor Inam land, who is lawfully entitled to the Kudiwaram right and who satisfies the conditions laid down under the Act, are recognised and a ryotwari patta is given to him under the provisions of Act 30 of 1963. Thus the rights are not extinguished as in the case of estates, but on the other hand the right in the Minor Inam lands is confirmed and recognised by the issue of ryotwari patta. The vesting contemplated under Act 30 of 1963 is a notional vesting to enable the Government to effect a settlement and levy assessment. The rights of the persons in possession conforming to the conditions laid down in the said Act are not affected by the provision of Act 30 of 1963. The Proviso to Section 3 of Act 30 of 1963 lays down that the Government shall not dispossess any person of any land in a Minor Inam in respect of which the person in

possession is entitled to ryotwari patta pending decision of the appropriate authority under the Act whether the person is entitled to Ryotwari patta.

9. It will be inequitable to apply the principles mentioned by the Supreme Court in a case relating to an estate, to a minor inam. In so far as Minor Inams are concerned the vesting is notional and does not affect the Kudiwaram right lawfully enjoyed or acquired as laid down in Act 30 of 1963. The vesting contemplated under Act 30 of 1963 is only to enable the Government to effect a Ryotwari Settlement and not to extinguish the existing rights in an Inam land.

10. The present case relates to a Minor Inam and the conclusion of both the Courts below that the mortgage is not wiped out in view of the provisions contained in Act 30 of 1963 is correct.

11. The next question to be considered in this second appeal is the question relating to nonjoinder of Palaniswamy Gounder, son of the mortgagor, raised by the appellant. Originally the mortgagor had assigned his entire interest and as such his son is not a necessary party. In any event this point had not been taken in the written statement filed by the appellant. The Courts below are right in negating this plea as one not taken in proper time.

12. The only other question that remains to be considered is the plea regarding the improvements claimed by the appellant. The evidence tendered by the appellant in this regard had also been disbelieved by both the Courts below and the said concurrent finding of fact will have to be confirmed.

13. In the result the judgments and decrees of both the courts below are confirmed and the second appeal is dismissed. However, there will be no order as to costs.