
(1952) 08 MAD CK 0031
In the Madras High Court
Case No : A.A.A.O. No. 154 of 1951

Gandavani Lakshama Naidu

APPELLANT

Vs

Maddini Kannayya Naidu

RESPONDENT

Date of Decision : 13-08-1952

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 9A(7)

Citation : AIR 1953 Mad 557 : (1953) 66 LW 65 : (1953) 1 MLJ 96

Hon'ble Judges : Subba Rao, J

Bench : Single Bench

Advocate : S.A. Seshadri Iyengar, for the Appellant; M. Natesan, for the Respondent

Final Decision : Dismissed

Judgement

Subba Rao, J.—This civil miscellaneous second appeal arises out of an application filed by the appellant u/s 19, Madras Agriculturists Relief Act to scale. down the decree debt. The appellant is defendant 3 in the suit. He along with other executed a usufructuary mortgage deed in favour of the respondent for a sum of Rs. 400. On 15-5-1941 he sold the property, the subject matter of the usufructuary mortgage, in favour of Yengamma for a consideration of Rs. 600. A petition for amendment of the decree was filed on the basis of Section 9A, Madras Agriculturists' Relief Act. The relevant sub-section, via., Section 9-A(7) reads as follows:

"(7) Nothing contained in this section except sub-section (1) shall apply to any usufructuary mortgage,

(i)

(ii) in respect of property situated in any other area, in the cases mentioned below: (a) Where during the period after 30-9-1937 and before 30-1-1948, the equity of redemption in the property subject to the usufructuary mortgage has devolved either wholly or in part on a person by or through "inter vivos" either

from the original mortgagor or from a person deriving title from or through such mortgagor otherwise than by a transfer Inter vivos", then to the whole or such part, as the case may be."

Section 9A will not therefore apply to a case where the equity of redemption was transferred between 30-9-1937 and 30-1-1948. Exhibit A. 2 whereunder the petitioner sold the property in favour of Yengamma is dated 15-5-1941. "Prima facie", therefore, Section 9-A(7)(ii)(a) will apply and the appellant is not entitled to have his debt scaled down. But the learned counsel for the appellant argued that though the appellant sold the property in favour of Yengamma for a consideration of Rs. 600 as Rs. 400 out of that amount was kept with him to enable him to pay the same to the "usufructuary, mortgagee and as he agreed to give possession only after the said amount was paid to the mortgagee, it must be held that notwithstanding the transfer he continued to possess an interest in the equity of redemption. Under Ex. A. 2 the appellant sold the property in the Yen-gamma for consideration. No interest in the property sold was reserved. The fact that a portion of the consideration was kept with the vendor or the circumstance that he agreed to put the vendee in possession after the amount was paid to the mortgagee would not confer on him any interest in the Immovable property. Under the sale the entire property devolved on Yengamma within the meaning of Section 9-A(7)(ii)(a) of the Act. The decision of Ramesam J. in - "Ratnam Pillai v. Kamalambal Ammal", AIR 1925 Mad 77S (A), relied upon by the learned Counsel, in my view, will not support him. There the question, was whether the mortgagor who had sold the property but agreed with the vendee to redeem the mortgage was entitled to redeem the mortgage. It is unnecessary to express any view on the correctness of the decision; but the learned Judge did not say that by reason of such an arrangement the vendor continued to have any interest in the Immovable property conveyed absolutely by him to another. In the instant case, in order to get the benefit of the provisions of the Madras Agriculturists' Relief Act, the appellant must establish that the property had not devolved by transfer "inter vivos" on the vendee under Ex. A. 2. As I have already said, under the sale deed the entire property was sold and there was no-reservation of any interest in the vendor. Section 9-A (7)(ii)(a) of the Act directly applies and the court below rightly dismissed the application.

2. The appeal fails and is dismissed with costs.

No leave.