

(1963) 11 MAD CK 0088

In the Madras High Court

Case No : Civil Revision Petition No. 2247 of 1962

James Devadasan Pakkiam and Another

APPELLANT

Vs

O. VR. SV. AR. Arunachalam Chettiar

RESPONDENT

Date of Decision : 22-11-1963

Acts Referred:

Stamp Act, 1899 — Article 40

Citation : AIR 1965 Mad 192 : (1964) ILR (Mad) 155 : (1964) 77 LW 704

Hon'ble Judges : S. Ramachandra Iyer, C.J

Bench : Single Bench

Judgement

S. Ramachandra Iyer, C.J.—This civil revision petition arises out of an order passed by the learned Subordinate Judge of Madurai in O. S. No. 39 of 1959 impounding a document dated 7-1-1951 holding it to be a conveyance and as such liable to a stamp duty of Rs. 990, and a penalty of ten times that amount, and, forwarding the same to the collector for appropriate action for the collection of the duty.

2. By two deeds dated 27-7-1948 and 5-7-1949 defendants 1 and 2 created two mortgages over eight items of properties. The mortgages were simple. The mortgagors defaulted in the regular payment of the interest. Thereupon both the debtors and the creditors entered into an arrangement to see that the claim under the mortgages did not get swollen. An agreement was entered into on 7-1-1951, under which the mortgagors handed over to the mortgagee the properties so that the income therefrom might be received by the mortgagee, and, after deduction the expenses of collection and paying sum of Rs. 200, for the subsistence of the mortgagors, the balance might be appropriated towards his dues. This document has been construed as a conveyance by the lower court and stamp duty and penalty has been levied thereon.

3. There is nothing in the document to show that there is a transfer or conveyance of the mortgagors interest to the mortgagee. so much is conceded on behalf of the learned Government Pleader to whom notice of this civil revision

petition was given. But it has however been contended by Mr. T. N. C. Rangarajan that the document should be regarded as a mortgage coming within Art. 40 to Sch. 1 of the Stamp Act. The Explanation to that article says that a mortgagor who gives a power of attorney to the mortgagee to collect the rent or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this Article. Under the document now before me possession has no doubt been given to the mortgagee. But he has an obligation in the nature of a fiduciary one to perform thereunder. It is not one whereby he would be entitled to receive and appropriate the rents towards his dues entirely. He had to collect the rents, pay a sum of Rs. 200 to the mortgagors for their maintenance, and, it is only the balance that he should appropriate to himself towards the amount due on the mortgages. For example if there is no surplus left, he would not get anything for this mortgage. The document is therefore more or less in the form of an agreement creating a fiduciary relationship between the mortgagors and the mortgagee whereby the latter binds himself by certain covenants. I cannot see how the document can be regarded as a mortgage. Even in the light of the explanation to Art. 40, treated as an agreement it is not disputed that it is properly stamped, and, the order of the lower court impounding the document cannot therefore be accepted, and, it is set aside. There will be no order as to costs.

4. Petition allowed.