(1955) 07 AP CK 0025

In the Andhra Pradesh High Court

Case No : Letters Patent Appeal No. 53 of 1951

K. Thammayya and Others APPELLANT

Vs

Mattapalli Raju and Others RESPONDENT

Date of Decision : 04-07-1955

Acts Referred:
Transfer of Property Act, 1882 — Section 72

Citation : AIR 1957 AP 862

Hon'ble Judges : Viswanatha Sastri, J;Krishna Rao, J

Bench : Division Bench

Advocate : P. Somasundaram and C. Rama Rao, for the Appellant; G. Balaparameswari Rao and K. Mangachari, for the Respondent

Final Decision : Dismissed

Judgement

Viswanatha Sastri, J.—The legal representatives of the deceased 3rd Respondent in the Court below are the Appellants in this Letters Patent Appeal presented against the judgment of Subba Rao, J., (as he then was) in C M.A. No. 434 of 1947. The appeal arises out of O.P No. 23 of 1945 filed by two mortgagees Mattap''alli Raju and Satyam u/s 19-A of Madras Act IV of 1938 .for determining the amount due under their mortgage and for the usual mortgage decree. The mortgagee, Raju, having died his legal representatives are Respondents 1 to e'' in this appeal and Satyam is the 7th Respondent, Respondents 8 and 9 in the appeal are father and son and were Respondents 1 and 2 in the court below. Kotipalli Thammayya was the 3rd resondent in O.P. No. 23kof 1945 and his legislatives are the Appellants in this Letters. Patent Appeal. We shall refer to the parties by reference to their array in O.P. No. 23 of 1945 in order to avoid confusion. On 27th March, 1931, a simple mortgage for Rs. 2,000 was executed by the 1st Respondent acting on behalf of hi a. self and his undivided son the 2nd Respondent, in favour of the Petitioners. The property mortgaged consisted of agricultural lands of an extent of acres 8 and 98 3/4 cents.

Respondents 1 and 2, the mortgagors, as well as the 3rd Respondent, a purchaser of the interest, of the mortgagors in the major portion of the mortgaged property filed objections in O.P. No. 23 of 1945 to the effect that the property in the possession of the 3rd Respondent, the purchaser, was not liable for the mortgage debt. The trial Court went into the dispute between the parties as regards the extent of the property liable as security for the mortgage debt and decided that 57 ceii''s in S. No. 171 out of the mortgaged properties was alone liable.

On appeal to the High Court by the Petitioners-mortgagees, the learned Judge held that they were entitled to proceed against acres 3 &,73 cents out of the properties in the hands of the Respondents and allowed the appeal. Before us it was urged on behalf of the Appellants that the conclusion of the learned Judge was based on a misconstruction of the documentary evidence in the case and that neither the trial Court nor the learned. Judge on appeal had, on an application under .section 19-A of Madras Act IV of 1938, jurisdiction to decide any question other than the amount .of the debt due to the Petitioners on the date of that application.

2. The objection to jurisdiction was evidently not raised before the learned judge, for, there is no trace hi his judgment of any such contention having been put forward. In the counter-statement filed by the Respondents in the trial Court it was vaguely alleged that the petition was not maintainable in law without any further indication whatever of the grounds on which this plea rested. The trial Court, though it .raised a point as regards the jurisdiction of the Court to entertain the application, stated that no arguments had been addressed before it and summarily overruled the objection to jurisdiction.

Being an objection to the jurisdiction or competency of the Court to adjudicate upon the rights and liabilities of the mortgagee and the mortgagor with reference to the extent of the property liable for the mortgage debt, on an application u/s 19-A of Madras Act IV of 1938, we like the learned Judges who admitted the Letters Patent Appeal allowed the Appellants to raise the point.

3. Before the enactment of Section 19-A of Madras Act IV of 1938, hereinafter referred to as ''the Act'' proceedings for scaling down debts were held under rules 2 to 10 of the rules framed under the Act. The rules, however, did not provide for the Court passing an enforceable decree directing a debtor to pay the debt as scaled down. The rules also did not provide who were all the persons that had to be impleaded as parties to an application for sealing down the debt, though obviously the creditor and the debtor had to be parties. Section 19-A of the Act, so far as it is now relevant, runs as follows:

19-A. (1) Where any debt incurred before the 22nd March, 1938, other than a decree debt is due by any person who claims that he was an agriculturist both on that date and on the 1st October, 1937, the debtor or the creditor may apply to the Court having jurisdiction for a declaration of the amount of the debt due by the debtor on the date of the application.

Provided that no such application Khali be presented or be maintainable if a suit tor the recovery of the debt is pending.

Explanation: The Court having jurisdiction under this section shall be the Court which would have jurisdiction to entertain a suit for the recovery of the debt as unsealed.

3. All persons who would has been accessory parties to a suit for the recovered the debt shall be impleaded as parties to the application under Sub-section (1) or under Sub-section read with rubs'' ction C2).

4. When any such as miracle, the Court shall first decide whelk''-" the debtor was such an agriculturist or not, am; h it finds that he was such an agriculturist, pass an order declaring the amount due by him or declaring; that the debt has barn discharged; as the case may he.

5. The Court shall dismiss the application if it finds that the debtor was not such ngri-culturist, (5) At any time after passing an. order under Clause (a) of Sub-section (4), the Court shall, on payment by the creditor of the Court-fee payable on a suit for the amount declared due to him, grant a decree to the creditor for such amount:

Provided that the creditor may, on his application, be granted a decree for an amount less than that declared due to him on paying the appropriate Court-fee.

6. The Court may order that the Court-fee, if any, paid by the creditor under Sub-section (5) shall be paid by the debtor in addition to the amount decreed.

8. The procedure laid down in the Code of Civil Procedure, 1908, for the trial of suits shall as far as may be, apply to applications under the section.

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9. No Court shall entertain a suit by the Creditor for the recovery of a debt:

(i) If an application has been made under Sub-section (i) in respect of such debt to a Court havir.ig jurisdiction and is pending in such Court; or

(ii) if a Court having jurisdiction has passed an order under Clause (a) Sub-section (4) in respect of such debt.

(4) In view of the definition of a debt in Section 3, CI. (iii) of the Act as any liability secured or unsecured, due from an agriculturist, it is clear that Section 19-A applies to mortgage debts also. In a series of decisions, the Madras High Court has held that the agriculturist debtor in order to be entitled to the benefits of the scaling down provisions of the Act need not be personally liable to the Creditor for the debt and a person whose properties would be liable to the discharge of the debt, would, if he were an. agriculturists, be entitled to a scaling; down of the debt as provided for in the Act, u/s 7 of the Act all debts payable by an agriculturist at the commencement of the Act shall be scaled down notwithstanding any law, custom or contract to the contrary and no sum in

excess of the amount scaled down shall be recoverable from an agriculturist debtor or his property. Section 19-A was newly enacted in order to provide, a more comprehensive and effective remedy to the parties and proceedings for scaling down, formerly held under the rules framed under the Act, must'' now be held u/s 19-A of the Act itself.

The object of the new provision was to avoid j a multiplicity of legal proceedings in the interests! both of. the debtor and creditor. Sub-section (4), (a) of Section 19-A requires the Court to pass an order declaring the amount due by the debtor on an application made u/s 19-A (1) and Sub-section (5) requires the Court to pass a decree for the amount so declared due to the creditor on his paying the requisite Court-J''ee. While securing the interests of the revenue, Sub-Section 5 avoids the necessity for a suit by the creditor, whose debt has been scaled down, in order to realize the debt. Indeed Sub-section (9) cf Section 19-A goes and enact that if an application made under Sub-section (I) for determination of the ruinous of the debt due is pending or it an order has been made mi such application under Sub-Section 4 (a) ni: Section 19-A in respect of such debt, the Court is debarred from entertaining a suit by the creditor for the recovery of the debt.

If there is an order under Sub-section (4) (a) of Section 19-A declaring the amount of the debt, due lo the creditor, his only remedy is to obtain a decree for the debt under Sub-section (5) on payment of the requisite Court-fee. It is in order to make the decree passed by the Court effective, that Section 19-A provides that the application ;for scaling down should be made to the Court, which would have jurisdiction to entertain a suit for the recovery of the debt as unsealed and also requires that all parties who would be necessary parties to a suit should be impleaded as parties to the proceedings u/s 19-A. We are here concerned with a simple mortgage. In view of the order passed under Sub-section (4) (a) of section. 19-A of the Act declaring the amount due to the mortgagees, they cannot file a suit for recovery of the scaled down amount. If it is to be said that the jurisdiction of the Court acting u/s 19-A is confined merely to scaling down the debt by the application of Section 8 or Section 9 of the Act as the case may be and declaring the amount due, in which other forum or proceeding are other matters essential to the- determination of the rights of the parties to be adjudged? If there is | a plea on the part of the mortgagor that there j was a failure of consideration, total or partial.; this plea should be decided by the Court to which an application u/s 19-A is preferred. If the mortgagee has expended the money to preserve the property mortgaged from destruction or forfeiture or sale or for supporting the mortgagor''s title to the property or for making his own-title thereto good against the mortgagor, he is entitled to add such money to the principal money u/s 72 of the Transfer of Property Act.

If, as in the present case, the mortgagee has himself purchased a portion of the equity of redemption, he may have to suffer a proportionate reduction of the debt due to him and cannot throw the entire burden of the debt on the remainder of the mortgaged properties. Before declaring the amount due to the mortgagee under Sub-section (4) (a) of Section 19-A the Court has to determine those matters which fall to be determined under the general law. If these questions are not decided by the Court passing an order under Sub-section (4) (a) before such an order is passed, they cannot be decided in a separate suit on the mortgage by reason of the prohibition1 enacted by Sub-section ((J) of the Act. If an undivided share of property is mortgaged and there is a subsequent partition as between the or and his ''ensnarer, the mortgage;-; can only proceed cams the substituted security if the pariiuou lair the

When and where is the question nature of the and extent of the .substituted suvntydter- to 1'' mined if not by the Court lvarine, an application referred u/s 19A of the Act? these considerations, it follows that the court deciding an application under should be held to have the power to decide sing between the mortgagee and 1 well as other owners or the as in a regular mortgage suit. J does not relinquish his acuity, have to pass a mortgage decve under sun-section (5) of section IDA. Per these unable to uphold the objection to of the Court raisid by the can '' the Appellants.

5.Coming to the merits of the easo Exhibit F-l, the mortgage deed, dated ''itch halo, lt''31 executed by Respondents 1 and v. in favour of the Petitioners mortgaged an extent of seers 8 and 98 3/4 cents of land in certain j, period survey numbers in the village of Ohitveda. Respondents 1 and 2 the mortgagors, had a the share in the properties and the 3rd Respondent purchased the interest of Respondents 1 and 2 a Court sale. ''The 3rd Respondent thereupon filed O.S. No. 5 of 1934 in the Court of the Subordinate Judge of Kakinada for partition and recovery of the l-20th share. To this suit ho hnplednd the present Petitioners as well as certain other persons as parties, under a rinse decree passed in the suit, he got oiieiouvlh acres 21, that is to say acres 5 and The extent of acres a and 25 cents which he got under the decree is not sought to bee liable for the realization of the to Petitioners and it is the difference between the extent of acres 5 and by the 3rd Respondent and acres 8 and 4 cents mortgaged under iisxliibit I''-J. or in olhnr word: ex-has been made rigtan debt die aim based in exeeuPi ''Modse decree legitimate learned Judge.

6. For these reasons, we are of the opinion that the Letters Patent Appeal fails and must be dismissed with costs of respondents 1 to 7.