(1957) 11 AP CK 0022

In the Andhra Pradesh High Court

Case No : Second Appeals No''s. 523 and 524 of 1953

Karka Somulu and others — APPELLANT

Vs

Reddy Appalanaidu and others — RESPONDENT

Date of Decision : 26-11-1957

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10

Citation : AIR 1958 AP 507

Hon'ble Judges : K. Subba Rao, C.J;Ranganadham Chetty, J

Bench : Division Bench

Advocate : C.V. Dikshitulu, for the Appellant; Y. Suryanarayana and O. Chinnappa Reddy, for Respondents 1 and 2, for the Respondent

Judgement

K. Subba Rao, C.J.—The main question in the two appeals relates to the impact of the provisions of the Estates Abolition Act (Act XXVI of 1948 hereinafter referred to as the Act) on the right of the plaintiffs to maintain the suits for redemption and possession.

2. The facts lie in a small compass. The plaintiffs in O S. Nos. 529 and 530 of 1949 are the same. The father of defendants 3 and 4 in O. S. No. 529 of 1949 (D. M. C. Vizianagaram executed a usufructuary mortgage bond in respect of 50 cents of land in favour of defendant 1 and 2. The plaintiffs'' fathers purchased the equity of redemption by a sale deed dated 21-2-1920 from defendants 3 and 4 and their father The father of defendants 5 and 6 in O. S. No. 530 of 1949 (who are defendants 3 and 4 in O. J. No. 529 of 1949) mortgaged an extent of 2 acre(sic) in favour of defendants 1 to 4. The plaintiffs'' father took an assignment the equity of redemption of this mortgage also Both the suits were filed for redemption are for possession of the mortgaged properties. The defendants inter alia, contended that the documents executed in favour of the plaintiff (sic) assignors were not mortgages but only leas and, therefore, they had acquired occupan(sic) rights in the said lands. Both the Courts fou(sic) that the two documents (Exs. A-8 and A(sic) were mortgages, that the debts due under the

s(sic) documents were full discharged and that, therefore the plaintiffs were entitled to possession.

The contesting defendants also raised plea that, by reason of the provisions of Act, the estate of the plaintiffs vested in Government and, therefore, the plaintiffs (sic) no longer any interest in the "said estate to able them to continue the suits. The first Co(sic) accepted this plea and dismissed the su(sic) while the lower appellate Court rejectedplea and decreed the suits. Hence, the sec appeal.

3. Mr. Dikshitulu, the learned counsel the defendants appellants contends that, Ur(sic) the Act, the suit properties vested in the Government, and, therefore, the plaintiffs could continue the suits. The suits were filed 10-12-1949 and the Act: came into force on 1949. The Government notified the es(sic) wherein the suit properties are situated, u(sic) S. 3 of the Act, on 2-1-51. It is, therefore, (sic) that, on the date when the suits were filed plaintiffs had, admittedly, a subsisting int(sic)in the properties, mortgaged.

Under S. 3 of the Act, after the not date, the entire estate stood transference the Government & vested in them. The question is whether the subsequent statutory transf(sic) the estate and the vesting of the same i(sic) Government had the effect of non-suiting plaintiffs. Such a transfer does not abat(sic) suits. Order XXII, Rule 10 of the CPC which governs a situation si(sic) to that which has arisen in this case thus:

1. In other cases of an assignment, (sic)tion or devolution of any interest durin pendency of a suit, the suit may, by lea(sic) the Court, be continued by or against the son to or upon whom such interest has or devolved.

It is not disputed that this provision is an enabling one; and, if it applies, the suits do not become defective by an assignment pendente (sic)lite, though the successor in interest may, with the leave of the Court, continue the suits. But, what is contended is that the vesting of the interest of the plaintiffs in the Government is not comprehended by any of the three terms (sic)sed in the rule, viz.; "assignment, creation or devolution." Section 3 (b) of the Act in express terms says that the entire estate stands (sic)ransferred to the Government and vests in (sic)hem.

Such a statutory transfer is either an assignment or a devolution within the meaning of the aid rule. By the operation of the statute, the interest of the plaintiffs was transferred to the government and, therefore, the plaintiffs'' interest devolves, by operation of law, on the government. We, therefore, find no difficulty (sic)holding that Order XXII, Rule 10, CPC governs the present "case" and, as (sic)aere is no abatement the plaintiffs could continue the suits, despite the fact that the Government was not brought on record.

A decision of the Nagpur High Court in AIR 1953 361 (Nagpur) is relied upon in support of the conten(sic)on that, in the case of a statutory transfer title, the plaintiffs, who lost the right, had longer any right to continue the suit. But, that case, there was no statutory transfer the right of the plaintiff to the Government, it new rights were created by the statute and sted in the Government.

(sic)Sinha C. J., after considering the provi(sic)ns of the Madhya Pradesh Abolition of Proletary Rights (Estates, Mahals, Alienated (sic)nds) Act 1950 (1 of 1950), observed at p. of the report: (at p. 371of AIR) as follows: "The State Government, therefore, is not in position of the assignee of the interest of proprietor, nor is it his successor in title." (sic)Ls not necessary to express our view on the (sic)rectness of the judgment, for, in the present case, (sic)e was a statutory transfer.

4. Shortly stated, the legal position is this : (sic)re is no abatement under, the provisions of (sic)er 22, CPC where there is assignment, creation, or devolution of initer(sic) of the plaintiffs in favour of a third party, (sic)ler 22, Rule 10 is an enabling provision, (sic)reunder the transferee may come on record continue the suit. The statutory transfer interest under the provisions of the Act Is assignment or devolution of interest, within meaning of that provision. The plaintiffs, therefore, could continue the despite the fact that their interest devolved the Government. The title inter sec between, (sic)plaintiffs and the Government does not for consideration and that would have to decided in appropriate proceedings. We therefore, agree with the view of the learned (sic)cict Judge that the plaintiffs could continue suit.

5. The next question is whether the suit transactions were mortgages as the respondents contend or leases as is argued by the learned counsel for the appellants. Ex. A-8 is one of the said mortgages and the other document (Ex. A-9) is also couched in similar terms. Ex. A-8 is styled as a deed of possessory mortgage and Khandagutta of Inam wet lands. The (sic)recitals of the document may be summarised thus.

There was prior indebtedness of the mortgagors. The balance due under the prior debt was ascertained. A portion of the interest was remitted. Further amounts were advanced and to the amount due to the creditors future interest was added and the total sum of Rs. 99-8-0 was arrived at. The creditors were put in "possession of the properties for a term of 71 years and the rent from the lands was fixed at Rs. 3-3-3 per year. Provision was made for payment of the revenue from and out of that amount and also a specified amount to the creditors. After the debt was discharged in the manner prescribed, the balance that remained payable was directed to be paid to the creditors in full discharge of the amount due under the document.

Provision was also made for the return of the document to the debtor. From the aforesaid recitals, it is manifest that there was a debt carrying interest, that there was the relation of creditor and debtor between the parties and that the mode of discharge of the debt was indicated. In the circumstances, we have no hesitation in holding that the document was a mortgage. That apart, this question was decided in the applications filed by the respondents for scaling down the debts under the provisions of the Madras Agriculturists'' Relief Act.

To those petitions, the appellants were parties. The debts were scaled down under S. 9A of the Agriculturists Relief Act on the basis that the documents were mortgages. Satyanarayana Rao J., who disposed of the appeals against the order of the learned District Judge scaling down the debts observed as follows:

The usufructuary mortgages in the two undoubtedly provided for the rate of interest and it is only on that basis that the principal and interest were totalled up and provision was made for the mode of discharge by the mortgagee continuing in possession of the property. In my opinion, S. 9-A of the Madras Act IV of 1938 was rightly applied by the Courts below.

It is manifest from the aforesaid order that the learned Judge scaled down the debts on the basis that the documents were mortgages. That order was made between the parties herein and certainly it operates as res judicata in the present proceedings.

6. For the aforesaid reasons, we hold that the judgment of the lower appellate court is correct and dismiss these second appeals with costs in S. A. No. 523 of 1953.

7. The plaintiffs, who preferred cross appeals, contend that they would be entitled to recover profits from the defendant mortgagees from the date of the suit till the date of delivery of the suit properties to them. To appreciate this contention, some of the relevant facts may be recapitulated. The suits were filed for possession and for recovery of future profits of the suit lands on the ground that the mortgages were discharged under S. 9-A of the Madras Agriculturists'' Relief Act. On 29-11-1949, the plaintiffs obtained declarations from the Court to the effect that the mortgages were discharged and filed the suits on-10-12-1949. The defendant mortgagees, who continued to be in possession after 29-11-1949, would certainly be liable to account for the profits to the plaintiffs.

8. Questions of some difficulty and nicety are raised pertaining to the mode of accounting. While the plaintiffs claim profit on the ground that the defendant mortgagees are trespassers from the date of the filing of the suits, the (sic)dendant mortgagees'' counsel contends that the accounting should be on the basis that the defendants are mortgagees. The learned counsel further argues that the defendant mortgagees are liable to render accounts as per the terms of the mortgage deed.

The mode of accounting depends upon the character of the possession of the defendant mortgagees after the statutory discharge of the debts i.e., on the question whether the possession of the defendants after the discharge of the mortgages was that of trespassers or mortgagees or trustees. This question does not fall to be considered at this stage. Whatever may be the character of the defendant mortgagees'' possession, they would be liable to account to the plaintiffs for the profits from the date of the suit. The plaintiffs will be at liberty to file an application for profits wherein the said question will necessarily have to be decided.

9. The memorandum of objections is, therefore allowed but without costs.

