
(1975) 11 MAD CK 0035
In the Madras High Court

Kathaperumal Pillai

APPELLANT

Vs

Murugesam Pillai and Another

RESPONDENT

Date of Decision : 05-11-1975

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : (1976) ILR (Mad) 75 : (1976) 2 MLJ 349

Hon'ble Judges : A. Varadarajan, J

Bench : Division Bench

Judgement

A. Varadarajan, J.—The plaintiff, who succeeded in the trial Court but failed in the lower appellate Court, is the appellant. He filed the suit for possession of agricultural lands. He had obtained the sale deed, Exhibit A-1, from the Court in execution of a compromise decree for specific performance obtained by him against the defendants in O.S. No. i33 of 1959 on the file of the Sub-Court, Tiruchirapalli. The defendants in that suit are not parties to the present action. The appellant obtained possession of the properties covered by Exhibit A-1 through the Court in E.P. No. 193 of 1964 on 21st September, 1964 with some standing crops which were said to be two months old, as seen from the delivery receipt, Exhibit A-2. His case was that thereafter at the instance of defendants 3 and 4, defendants 1 and 2 trespassed on the property on 21st October, 1964 and cut and carried p.way the crops. He, therefore, filed the suit for recovery of possession of the properties with past and future mesne profits.

2. The second defendant alone resisted the suit contending that he was a tenant of a portion of the suit property under the original owner under the insufficiently stamped and unregistered lease deed, Exhibit B-1, and that he continued to be in possession and could not be evicted in view of the provisions of the Tamil Nadu Cultivating Tenants Protection Act and was liable to pay only the rents. The lease deed, Exhibit B-1, which was insufficiently stamped had been validated by payment of the necessary stamp duty and penalty and has been relied upon by the Court below for the collateral purpose of showing the nature of possession of

the second defendant.

3. The trial Court held that in view of Section 52 of the Transfer of Property Act the lease under Exhibit B-1 is not valid and would not affect the appellant's right to recover possession of the property, and decreed the suit. But, on appeal, the learned Subordinate Judge held that the lease by the owners of the property pending the suit for specific performance of the agreement to sell these properties to the appellant was valid and entitled the second defendant to the benefits of the Tamil Nadu Cultivating Tenants Protection Act and he allowed the appeal and modified the decree of the trial Court by dismissing the suit in respect of the western moiety in the plaint schedule properties which alone was in the possession of the second defendant. Hence this second appeal.

4. The learned Counsel for the second defendant submits that the owners of the agricultural lands, who were the defendants in the said O.S. No. 133 of 1959, had title to the properties until the execution of the sale deed, Exhibit A-1, in pursuance of the decree for specific performance of the contract and were, therefore, entitled to lease a portion of the properties to the second defendant and he is entitled to the benefits of the Tamil Nadu Cultivating Tenants' Protection Act, and Section 52 of the Transfer of Property Act will not apply. He relied upon certain decisions in support of his contention.

5. Pandrang Row, J., has held in *Darbha Venkata Somayajulu Vs. Potula Sathiraju*, that where a mortgagor had granted a lease of the mortgaged property after a suit had been brought to enforce the mortgage but before the decree, and the mortgagee, applied for appointment of a Receiver and the Court made an order directing the lessee to deposit a sum of money in Court every year as annual rent, and the properties were sold in execution and purchased by the mortgagee who again applied for appointment of a Receiver claiming that the crops belonged to him after the sale, that the lease was not affected by the rule of *lis pendens* and the mortgages-purchaser acquired only the rights of his mortgagor and could therefore only claim his share represented by the rent and not the entire properties. Sen, J., has held in *Ram Dayal Vs. Asghar Khan*, that where during the pendency of a mortgage suit or proceedings consequential upon a decree passed in such suit the mortgagor in the ordinary course of the management of his property grants a lease of the mortgaged property in whole or in part for an adequate rent, the lease is not obnoxious to the provisions of Section 52 of the Transfer of Property Act and the lessee holds the property subject to the rights of the mortgagee-decree-holder. A Bench of this Court has held in *Penumatsa Subbaraju v. Veegasena Seetharamaraju* and Anr. ILR (1916) 'Mad. 283 : 28 Ind.Cas. 232 : 1915 M.W.N. 174 where after a decree for sale on a mortgage, the mortgagor who was in possession, granted a lease of his properties for one year with a covenant for payment of the rent on a particular day, that the creation of a lease for one year after a suit and decree on mortgage is not affected by the doctrine of *lis pendens* on the ground that such a lease is an ordinary incident of the beneficial enjoyment of a mortgagor who had been

allowed to remain in possession. In my view, these decisions are not in point, having regard to the fact that when the leases in those cases were granted, there was no provision like the Tamil Nadu Cultivating Tenants' Protection Act conferring a right on the tenant to hold the property subject only to his liability to pay rent to the owner of agricultural lands.

6. The other decision relied upon by the learned Counsel for the respondent is of a Pull Bench of the Bombay High Court in *Anaji Thamaji Patil Vs. Ragho Bhivraj Patil and Another*, , where an owner of a land had created a simple mortgage over it and during the pendency of a suit by the mortgagee for sale of the mortgaged land, he had leased it and it has been held that it does not in any way effect the rights of the mortgagee as contemplated by Section 52 of the Transfer of Property Act and that the tenant cultivating the land in such a case was lawfully cultivating the land and was entitled to the benefits of the Bombay Tenancy and Agricultural Hands Act. The question for consideration there was whether such a tenant was lawfully cultivating the land and entitled to the benefits of the Act. This decision also does not appear, in my opinion, to be in point. The last decision relied upon by the learned Counsel for the respondent is of a Full Bench of this Court in *Chandrasekaran Vs. Kunju Vanniar and Others*, , which arose out of a suit filed by the purchaser from a mortgagor for redemption of a usufructuary mortgage, and the defendants 1 and 2, who were the successors-in-interest of the usufructuary mortgagee, did not resist the suit, but defendants 3 and 4, who were in possession as tenants inducted by the usufructuary mortgagee resisted the suit on the ground that they were entitled to the benefits of the Tamil Nadu Cultivating Tenants' Protection Act. It has been held:

Even though the usufructuary mortgage on the strength of which the mortgagee let Out to the tenant has been redeemed, since the tenancy originated in an agreement and since because of the redemption, such an agreement came to an end but the tenant continued to be in possession, he will squarely be within the inclusive definition of the term "cultivating tenant" entitled to the benefits of the Act.

This decision also is not in point, as the lease in that case was not pending a suit and therefore the question whether Section 52 of the Transfer of Property Act applied, did not arise for consideration in that suit.

7. The learned Counsel for the appellant submits that in a suit for specific performance, in the event of a decree, the successful plaintiff is entitled to be put in possession of the properties and that this lease by the defendant in such a suit pending that suit will defeat the rights of the plaintiff, especially when there is a provision like the Tamil Nadu Cultivating Tenants Protection Act, and therefore Section 52 of the Transfer of Property Act will apply. He relied upon a Full Bench decision of this Court in *Arumugha Gounder Vs. Ardhanari Mudaliar and Others*, , where a tenant who had been let into possession of the land and incidental immovable property by a Receiver appointed by Court pending a suit

wag held to be not entitled to protection under the Tamil Nadu Cultivating Tenants' Protection Act, on the ground that by the act of the Receiver letting the tenant in possessions the property has been placed beyond the reach of the Court to give the plaintiff the remedy he sought which, the Court held, he would be entitled to and that the intention of the Act was not to cover such a case, as, according to the preamble of the Act, it is one for the protection from eviction of cultivating tenants in certain areas in the State of Madras because it is necessary to protect such tenants in these areas from unjust eviction. Ismail, J., following a decision of a Bench of this Court S.S. Rajabathar Vs. N.A. Sayeed, , that a direction to deliver possession of the property is incidental to a decree for specific performance of an agreement to sell immovable property, and, therefore, the executing Court has jurisdiction to order delivery of possession, although the decree in the suit for specific performance does not specifically provide for delivery of possession and that the executing Court has jurisdiction to grant the relief of possession as incidental to the execution of the decree for specific performance of a contract of sale. Therefore, the plaintiff in a suit for specific performance is entitled in the event of his succeeding in that suit, to be put in possession of the properties even in cases where the decree is silent and does not specifically say that he is entitled to be put in possession of the properties. A Bench of this Court has held in Vedachari Vs. Narasimha Mudali and Others, , that the doctrine of lis pendens applies to suits for specific performance of agreements to sell immovable properties and that it applies to Court sales as well as to private sales. Therefore, though ordinarily the act of leasing of agricultural lands may be an act of management of the property and the title to the property continues with the defendant in a suit for specific performance until a sale deed had been obtained by the plaintiff in that suit in pursuance of a decree obtained by him, having regard to the fact that certain rights in agricultural lands have been conferred on tenants by the Tamil Nadu Cultivating Tenants' Protection Act, in my view, a lease in such a case would be affected by the doctrine of lis pendens, u/s 52 of the Transfer of Property Act. Therefore, I agree with the learned Counsel for the appellant that the lease in this case admittedly granted by defendants in the suit for specific performance during the pendency of that suit is hit by Section 52 of the Transfer of Property Act and that the appellant is entitled to possession of even the other moiety.

8. The appeal is, therefore, allowed with costs payable by the second defendant-first respondent. The trial Court's decree regarding mesne profits will stand. No leave.