

(1986) 05 KL CK 0008
In the High Court Of Kerala
Case No : O. P. No. 9730 of 1982

Khadija Umma

APPELLANT

Vs

Kochupennu Paru and 3 Others

RESPONDENT

Date of Decision : 26-05-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Debt Relief Act, 1977 — Section 10, 11, 2(4), 3, 3(f)

Citation : (1986) 23 KLJ 559

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : P.N. Ramakrishan Nair, K.V. Sudananda prabhu and R. Harikrishnan, for the Appellant; S. Venkitasitbramonia Iyer, T.H. Abdul Aziz and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Menon, J.—In this petition under Article 226 of the Constitution the petitioner seeks certiorari against the orders passed by the Tribunal and the Appellate Authority, in proceedings under Sec. 4 of the Kerala Debt Relief Act, 1977 (Act 17/77). Before setting out the facts and examining the grounds of attack, it will be useful to briefly notice the relevant provisions of the Act. The Act is designed "to provide relief from indebtedness to certain persons in the State of Kerala". "Debt" is defined as any liability in cash or kind, whether secured or unsecured, subsisting at the commencement of the Act, but excluding those specifically enumerated in the definition clause itself. "Debtor" is a person whose annual income does not exceed Rs. 3000/- and whose total indebtedness does not also exceed Rs. 3000/-. Sec. 3 provides for "discharge of debt". Every debt and interest thereon payable by a debtor (to a creditor) shall be deemed to be wholly discharged, with effect from the commencement of the Act. Civil Courts are barred from entertaining suits against "debtors" from such commencement, and all pending suits and other proceedings for recovery of debts are to abate. Movable properties pledged by a debtor shall stand released, and mortgages

executed by debtors shall stand redeemed. As we are in this case concerned with a mortgage and its redemption, it is necessary to reproduce Sec. 3 (f):-

3. Discharge of debt. - Notwithstanding anything contained in any other law for the time being in force, or in any contract or other instrument having force by virtue of any such law, or in any decree or order of court, with effect on and from the commencement of this Act-

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) every mortgage executed by a debtor in favour of a creditor shall stand redeemed and; the creditor shall be bound to deliver possession of the mortgaged property to the debtor.

Sec 4 provides a machinery for securing to the debtor the benefit of the redemption referred to above; sub-sections (1) and (2) thereof read as follows:-

4. Reconveyance of property - (1) any debtor entitled to the delivery of possession of any property under clause (e) or clause (f) of section 3 or any other person on behalf of such debtor may apply to the Tribunal within three months from the commencement of this Act or within such further period as may be notified by the Government in this behalf, for such delivery of possession.

(2) On receipt of an application under sub-section (1), the Tribunal shall make necessary inquiries in respect of such application and, if it is satisfied that the applicant or the person on whose behalf the application has been made is entitled to the delivery of possession of the property mentioned in the application, it shall, by order, direct the person in possession of such property to deliver possession thereof to the applicant or to the person on whose behalf the application has been made, within a period of thirty days from the date of service of the order;

Provided that no order under this sub-section shall be made unless the person in possession of the property has been given a reasonable opportunity of being heard.

Sub-sec (3) stipulates that orders passed under sub-sec.(2) are to be served on the concerned persons in the manner provided for, and sub-sec. (4) provides for an appeal. from the order of the Tribunal, to an Appellate Authority. Sub-sec (5) lays down that where an order under sub-sec.(2) is not complied with (subject of course to the decision in the appeal, if any)

The Tribunal shall cause the property to which the order relates to be delivered

to the debtor by putting him in possession of that property.

Sec. 5 deals with the constitution of Tribunals, and Sec. 6, with the appointment of appellate authorities. Sec. 8 bars legal practitioners from appearing before the Tribunals and the Appellate Authorities. Sec. 9 relates to "burden of proof", and reads:-

9. Burden of proof Notwithstanding anything contained in any law for the time being in force, in any suit or other proceeding, the burden of proving that a debtor is not entitled to protection under the provisions of this Act shall be on the creditor.

Sec. 10 excludes the jurisdiction of civil courts in respect of matters which under the Act are to be determined by the Tribunals and the appellate authorities; and Sec 11 provides that the provisions of the Act shall have over-riding effect, notwithstanding the provisions of other laws, contract, custom etc.

2. Rules have been framed under the Act, These provide that an application before a Tribunal under Sec. 4 (1) is to be filed in Form 1. on receipt of the application, the Tribunal is to issue notice to the creditor, and when objections are received, they are to be enquired into. Evidence can also be allowed to be adduced. The order passed by the Tribunal is to be communicated to the parties and also to the District Collector. No separate application for execution of the order is contemplated. Rule 8 only provides that for the purpose of putting a debtor in possession of the property under Sec. 4 (5), the Tribunal may issue a warrant in Form 6 to any of the members of its staff It can also direct the giving of police or other assistance ""for the execution of the warrant".

3. Now to the facts of the case. Respondents (1) and (2) had executed a mortgage in favour of the petitioner, in respect of 30 cents of land and a building, in the year 1960. The principal amount secured was Rs. 15,00/-. Asserting that their annual income was also below Rs. 300/-a year, the respondents claimed that they were entitled to get back the property from the petitioner. They filed an application before the Tribunal (Tahslidar) under Sec. 4 (1), as O. P. 12/77; but it was dismissed as it was filed beyond the 3-month period specified in Sec. 4 (1). Subsequently, a "further period" was notified by the Government under the sub-section, and the respondents moved a second application, as D. R. A. 1/79. The Tribunal allowed the application by order dated 12-9-1980, but on appeal by the petitioner, the Appellate Authority (RDO; set aside the order on 20-8-81. are remitted the matter for fresh consideration, so that the petitioner could get one more opportunity of being heard. The Tribunal accordingly took up the matter and passed a fresh order on 15-12-81. again allowing the application and directing delivery of possession of the property to the respondents. The petitioner again appealed to the RDO, but the appeal was rejected on 6-10-82. Hence the challenge herein, to the Tribunal's order dated 15-12-81 and the appellate decision dated 6-10-82.

4. One of the grounds raised in the Original Petition is that the matter had

become res judicata by reason of the dismissal of O.P. 12/77; but this ground was not pressed at the hearing, obviously because the dismissal was not on merits. I am also unable to find any substance in the petitioner's grievance that she was denied sufficient or reasonable opportunity: the records show otherwise. Even after remittal by the Appellate Authority on 20-3-81 specifically for affording another opportunity to the petitioner, the Tribunal had posted the matter at least on three different occasions.

5. The more serious contention advanced by counsel is that the Tribunal and the Appellate Authority, while upholding the case of respondents that they were "debtors" within the meaning of Sec. 2(4) of the Act, have misconstrued the scope of Sec. 9 of the Act, as understood by this Court in some of its decisions. Reference is made to the following observations in *E K. Prarthana Sanghom v. Appunni* (1984 KLT 702):

Section 9 does not, however, declare that the burden of proof that a person claiming the benefits of the Act is a "debtor" "within the meaning of the Act, is on the creditor. The judgment debtor who claims a statutory discharge of the decree debt cannot succeed unless he proves that he is a "debtor" within the meaning of the Act. Once it is proved that the judgment debtor is a "debtor" under the Act the burden shifts to the creditor to prove under Sec. 9 that the debtor is not entitled to the benefits of the Act. In other words the initial burden of proving that he is a "debtor" within the meaning of the Act is on the persons who claims the statutory discharge of the debt under Sec. 3 of the Act.

There are similar observations in other decided cases also; and the argument, if I have understood it correctly, is that Sec. 9 imposes some kind of special burden on all debtors claiming the benefit of the Act to prove, by adequate evidence, that their income and indebtedness are within the limits specified in Sec. 2 (4) and that unless this is discharged, there could be no question of granting them any relief. And the complaint here is that the respondents had, by themselves, adduced no evidence in discharge of this special burden.

6. It is true that Sec 9 is not happily worded, and is therefore susceptible of more than one interpretation. The scheme of the Act, as we have seen, is to wipe out certain classes of debts, subsisting on a specified date. After that date, civil courts cannot entertain suits for recovery of such debts. Where suits have already been filed and proceedings are pending, the suits or proceedings are liable to be dismissed or closed (as abated). It is thus quite clear that in all such cases where the benefit of the Act is claimed by any person, the civil court will have to record findings about his annual income and total indebtedness. The provisions of the Evidence Act are applicable to proceedings before a civil court and under the said Act the burden of proving before the court that his income and indebtedness are within the permissible limits, will be on the debtor claiming the benefit of the Act, This is the normal rule. The question is whether Sec. 9 has any impact on this normal rule. The Section says that notwithstanding anything in any other law (and therefore in the Evidence Act) the burden of proving that a

debtor is not entitled to protection under the Act will be on the creditor. One way of construing the section is to hold that the creditor's burden is only to show that the debtor is not entitled to protection that the burden of showing that he is entitled to protection is still on the debtor, and that the creditor's burden to prove the negative will arise only after the debtor has discharged his burden by proving the positive. That will probably be a literal approach to the language of the statute. Another way is to construe the section as a device intended to vary the normal rule, by ordaining a presumption that everyone applying for the benefit of Sec. 3 will be entitled to the protection of the Act, unless that presumption is rebutted by the other side. I am bound by Division Bench decisions, and sitting single, it will be idle for me to indicate my preference. But even those decisions do not go further than recognising the well-known rule of evidence that where a person claims relief before a court on the basis of certain facts, it is for him to prove their existence. He cannot simply file an application and leave it to the other side to disprove the facts he has asserted, without himself proving them first. Sec. 9 is not evidently intended to supplement the Evidence Act by placing on the indigent indebted, any additional or unusually onerous burden of proof.

7. I have also some doubt whether concepts like "initial burden" and "final burden" are as important in proceedings before the Tribunal traceable to clauses (e) and (f) of Sec. 3 of the Act, as they are in proceedings before a court, traceable to the other clauses of the section. Ordinarily, tribunals like the one we have here are supposed to be free from the technicalities of Evidence Act and strict procedural formalities. Section 4(2) does not speak of a "trial" or other legal proceedings to be conducted in accordance with any set rules; it only speaks of an "enquiry" in conformity with the rules of natural justice. Sec. 7 refers only to powers necessary for summoning witnesses and ordering discovery and inspection of documents. Section 8 is designed to keep out legal practitioners from all proceedings before Tribunals and appellate authorities, so that these fact-finding bodies can make an honest attempt to arrive at the truth by resort to the more informal methods associated with the rough jurisprudence of administrative adjudication, different from the refined jurisprudence of lawyers and courts, intimidating to the layman. I may not, therefore, be outrageous to suggest that the construction put on Sec. 9 by the decisions of this Court, all arising from proceedings before civil courts, should not fully be extended to cases arising from proceedings before the Tribunals under Sec. 4.

8. Be that as it may, the orders impugned and also the records of the case do show that the present was not a case where respondents(1) and (2) had filed the application under Sec 4 and then left it to the petitioner to prove that they were not entitled to the protection of the Act. The tribunal's order is also not based on any such understanding of Sec. 9. There was evidence before it, in the form of an income certificate, as to what the annual income of the respondents was. In answer to the petitioners' case that the 2nd respondent was getting an income of Rs. 700/- per mensem % as wages alone, a certificate had also been produced

from the concerned employer that this was not the true state of affairs at the relevant point of time. The respondents had thus "discharged their initial burden"- if that is the requirement of Sec. 9- and there was no evidence to the contra. The Tribunal's finding about income was thus based on material, and not on conjectures , nor on any mistaken notion about the true scope of Sec 9, And there was no case for anyone that the respondents had any other debts. The finding that they were "debtor" at the relevant time could not, therefore, be successfully assailed in these proceedings

9. The only other contention urged by Mr. Ramakrishnan Nair for the petitioner is that the Tribunal and the appellate authority erred in rejecting the claim for value of improvements, under the provisions of the Kerala Compensation for Tenants Improvements Act, 1958 (Act 29/58). Sec 51 of the Transfer of Property Act recognises, to some extent or under certain circumstances, the right of a transferee of immovable property, for value of improvements made by him. Sec. 63A of the same Act recognises such a claim specifically in favour of a mortgagee, in the absence of a contract to the contrary, The provisions of Kerala Act 29/58 go further they provide that a mortgagee who has made improvements to the mortgaged property will be entitled in all cases, and despite termination of the mortgage by tender of mortgage money etc., to compensation for improvements. To be more precise, sec. 4 of Act 29/58 provides that the mortgagee will be entitled to remain in possession "until eviction in execution of a decree or order of Court": and Sec. 5 stipulates that in every suit for redemption, the court is bound to examine the compensation claims of the defendant and pass a decree "declaring the amount so found due" and ordering that on payment of the said sum into court by the plaintiff, along with the mortgage money etc., the defendant shall put the plaintiff in possession. The scheme of the Act is thus to confer some new or additional rights for value of improvements, on mortgagees (and other persons) in possession i.e., rights not recognised by the contract of mortgage or the provisions of the T. P. Act. and these rights are secured by providing that the mortgagee would be entitled to continue in possession till the compensation payable is fixed in the decree for redemption, and is paid into court. The rights under Act 29/58 are thus to be worked out in redemption suits through the ordinary courts, by ascertaining their value and adding it to the redemption price otherwise payable.

10. But sections 3 and 4 of Act 17/77 unfold a totally different scheme; there is no need for any suits for redemption, or for any "decree" by court, or for ascertainment of redemption price and payment of the same into court. Section 3 (f) stipulates that with effect from the commencement of the Act every mortgage shall stand redeemed", and this is "notwithstanding anything contained in any other law" or contract or instrument. The Act "commenced" from 13-1-77, and the simple meaning of the" afore-noticed provision is that the mortgage in this case stood redeemed from that moment. What is provided for is a statutory redemption, a redemption by operation of law, without decree of court or payment of redemption price. The mortgage ceased to exist; from 13-1-1977.

From that date there was no mortgagee in law, who could claim compensation under Act 29/58. This position is made clearer by the second part of clause (f) which indicates that the effect of the statutory redemption envisaged in the first part is to impose an obligation on the creditor (mortgagee) "to deliver possession of the mortgaged property to the debtor". Sec. 4 also shows that there is no question of the Tribunal determining the redemption price or ascertaining the value of improvements and passing a decree for its payment, as required under Act 29/58. All that the section envisages is the passing of the time specified in sub-section (1), the filing of an application by the debtor after such lapse of time, and an enquiry by the Tribunal into the question whether the applicant is a debtor or not. When once the Tribunal finds that he is, it is its duty, without anything more, to direct delivery of possession. This position is further confirmed by the provisions of sub-sec. (5) of Sec. 4, and also by the rules noticed earlier. In short, Act 17/77 does not contemplate any arrangement for going into compensation claims under Act 29/58, where the mortgagor is a debtor as defined in the former.

11. It will also be advantageous to compare the provisions of Act 17/77 with those of the Kerala Agriculturists' Debt Relief Act, 1970 (Act 11/70), designed to grant relief to indebted agriculturists. Sec. 11 of the latter enactment provides for premature redemption of possessory mortgages by agriculturists, by "application" to court, and deposit of one third of the mortgage amount, interest as provided for in the section, and the value of improvements as determined by the court. On the deposit of amounts as above, the court is to "put the mortgagor in possession of the property" and pass an order allowing the mortgagee to recover the balance of mortgage money in instalments. And the order so passed is to be deemed a "decree". When Act 17/77 was placed on the statute book, the legislature must have been aware of the rights available to mortgagees under Act 29/58; yet it declined to incorporate in the former, provisions similar to those in Sec. 11 of Act 11/70, specifically reserving or reiterating the right of mortgagees in possession to claim value of improvements. This should be taken as a deliberate departure in policy, though limited in its application to the class of debtors the law-makers were desirous of helping.

12. It was argued that Act 17/77 could be construed consistently with the survival of the rights available to all mortgagees under Act 29/58. This is only another way of suggesting that two enactments should be read harmoniously as far as possible (*Vasudev v. Pranalal* - AIR 1971 SC 1728), or that repeal by implication is not to be readily inferred (*Reddanna v. RDO* - 1978 AP 366). But where the language of a statute is clear and unambiguous, there is no scope for invoking such rules of interpretation. The non-obstante clause with which Sec. 3 opens, and the over-riding effect given to the provisions of the Act by Sec. 11 are pointers that the legislature did not want to protect or save rights otherwise available to mortgagees. Reference has already been made to the simple language and the straight-forward approach of Sec. 3(f). Sec. 4 makes mention of a "debtor entitled to delivery of possession", clearly suggesting that the

direct and immediate consequence of the operation of Sec. 3(f) is to confer such entitlement on the mortgagor. without bothering about redemption and payment of a price for it. It is possible to say that the directions of Sec. 4 contain a legislative understanding of the scope and impact of Sec. 3(f). That apart, as rightly pointed out by the authorities below, the petitioner had adduced no evidence to establish that the building in the 30 cents had been reconstructed by her at a cost of Rs. 10,000/-, as, claimed. On the other hand, records showed that during 1973-74 the property tax assessment for the building was in the name of the first respondent. The petitioner had also filed an affidavit in O.S. 192/79 of Alleppey Munsiff Court that the building seen in the property was the one described in the mortgage deed of 1960.

The result is that no grounds are made out for interfering with the view concurrently taken by the authorities below; and the original petition is accordingly dismissed, but without any order as to costs.