
(1958) 12 MAD CK 0023
In the Madras High Court
Case No : A.A.O. No. 260 of 1955

Km. N. Sp. N. Valliammai Achi	Vs	APPELLANT
J.A. Ramachandra Ayyar and Others		RESPONDENT

Date of Decision : 03-12-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 2, Order 34 Rule 11
Tamil Nadu Agriculturists Relief Act, 1938 — Section 19

Citation : AIR 1959 Mad 433

Hon'ble Judges : Panchapakesa Ayyar, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar, for the Appellant; M. Natesan, for the Respondent

Judgement

Panchapakesa Ayyar, J.—This civil miscellaneous appeal first came on for hearing before one of us (Basheer Ahmed Sayeed J.). As it was represented before him that it involved a question of law of considerable importance not covered by any decision of this court or any other High Court or Supreme Court till now, it was directed to be posted before a Bench. That is how it has come up before us for hearing and disposal.

2. The facts were briefly these: One Nachiappa Chettiar was the first mortgagee in respect of the suit properties worth some Rs. 35000 from one Ramachandra Iyer, the owner and mortgagor (defendant 1). This Ramachandra Iyer had also executed a second mortgage by deposit of title deeds, operating as equitable mortgage for some Rs. 7000 and odd in favour of Seth Dayaldas Hasanand (defendant 2). The plaintiff, Valliammai Achi, the widow of Nachiappa Chettiar, obtained a preliminary decree in O. S. No. 210 of 1949 on the file of the Subordinate Judge of Madurai against the mortgagor Ramachandra Aiyar (defendant 1), and the puisne mortgagee, Dayaldas Hasanand (defendant 2) for Rs. 20409-14-0. It was an ex parte decree.

That ex parte decree was set aside so far as the first defendant Ramachandra

Iyer was concerned, and another preliminary decree was passed against him on 8-7-1950 declaring the amount due by him under the mortgage as Rs. 17822-4-0, as he was an agriculturist entitled to the benefits of the Madras Agriculturists Relief Act. But as regards the second defendant, Hasanand, who was not an agriculturist, the original decree for Rs. 20,409-14-0, passed on 21-2-1950, stood. A final decree was passed on 27-1-1951 on the lines of the two preliminary decrees, as no amount was paid by either of the mortgagor or the puisne mortgagee. Valliammai Achi the decree-holder, took out E. P. No. 122 of 1953 for recovering the amounts under the preliminary decrees by sale of the hypotheca.

The second defendant had obtained a decree in O. S. No. 146 of 1947 on 22-10-1948 against the mortgagor Ramachandra Iyer for some Rs. 8939, the amount due by then on the puisne mortgage. He had also made Nachiappa Chetti a party to that suit and had claimed priority over him. The Court had held that Nachiappa Chettiar's mortgage debt had priority over the equitable mortgage of Hasanand. It is after that Hasanand was made the second defendant in O. S. No. 210 of 1949, the suit filed by Valliammai Achi, the widow of Nachiappa Chettiar, and the two preliminary decrees resulted.

3. The second defendant, Hasanand, assigned his decree in O. S. No. 146 of 1947 in favour of the fourth defendant Soundarapandia Chettiar, the third respondent in this civil miscellaneous appeal for Rs. 3500. Bhaggyammal, the third defendant in O. S. No. 210 of 1940, was only a maintenance holder entitled also to a right of residence, and she has died since. This is why Soundarapandian Chettiar, the fourth defendant, in O. S. No. 210 of 1949, has been promoted as the third respondent in this civil miscellaneous appeal.

4. Soundarapandia Chettiar had taken the assignment of the decree of Hasanand the puisne mortgagee, for Rs. 3500, and he had, in execution of that decree, purchased the entire suit property himself on 3-7-1953 for Rs. 12000 and had set off against it the amount due under puisne mortgage which had come to that amount. Then, he paid Rs. 21,175-8-1 outside the Court to Valliammai Achi, the decreeholder in O. S. No. 210 of 1949, and completely satisfied the scaled down decree amount due by the mortgagor Ramachandra Iyer, defendant 1. He then wanted full satisfaction of the entire decree in O. S. No. 210 of 1949 in both its parts, scaled and unsealed, to be entered up.

5. The learned Subordinate Judge, after hearing the arguments on both sides, and considering the rulings cited by either side, came to the conclusion that full satisfaction should be entered in E. P. No. 122 of 1953, rejecting Valliammai Achi's contention that she had the right to recover the difference between the scaled and unsealed amounts, and that the E. P. should be dismissed. He allowed E. A. Nos. 641 and 703 of 1953, two petitions for entering full satisfaction filed by Soundarapandian Chettiar, the assignee of the puisne mortgagee, subject to the unsealed amount, and the original mortgagor Ramachandra Iyer, against whom only a scaled down decree had been passed. He directed all the parties to

bear their own costs, in the E. P. and the two E.As. evidently because the point was a new one not directly covered by any ruling so far.

6. Valliammai Achi has felt highly aggrieved and has filed this civil miscellaneous appeal.

7. We have perused the entire records and heard the learned counsel on both, sides. Mr. R. Gopalaswami Aiyangar, the learned counsel for Valliamini Achi, and Mr. Natesan, the learned counsel for Soundarapandian Chettiar, the assignee from the puisne mortgagee, have argued the case fully and fairly. There is no dispute by Mr. R. Gopalaswami Aiyangar that full satisfaction was rightly entered in E. A. No. 703 of 1953 filed by the mortgagor Ramachandra Iyer, as the entire scaled down amount due by that individual had been paid by Soundarapandian Chettiar. The contest by Mr. Gopalaswami Aiyangar centered round the full satisfaction entered in E. A. No. 641 of 1953, filed by Soundarapandian Chettiar, the assignee from the puisne mortgagee, who was liable to pay the unsealed amount. Mr. Gopalaswami Aiyangar urged that, it was unheard of to enter full satisfaction regarding this unsealed decree when admittedly the difference between Rs. 20409-14-0, covered by the unsealed amount, and Rs. 17822-4-0, covered by the scaled down amount, had not been paid.

When we asked Mr. Natesan under what law or rule he claimed full satisfaction to be entered when there had been no satisfaction regarding this amount covered by the difference he said that, as a matter of fact, the difference had not been paid, but, as a matter of law, it must be deemed to have been wiped out. According to him, when a decree is passed by a court for the scaled down amount against an agriculturist judgment debtor, and for the unsealed down amount against the non-agriculturist judgment debtor, but the property is wholly owned by the agriculturist judgment debtor, the moment the entire amount due by the agriculturist judgment debtor is paid the entire property stands redeemed, and the liability for the difference due under the unsealed amount is automatically wiped out.

He relied for this extraordinary proposition on a ruling of a Bench of this court in Subramanian Chettiar Vs. A.K.A. Ramachandra Reddiar, . Mr. Gopalaswami Aiyangar pointed out quite rightly that this ruling went on the basis of an old line of cases which ended with the Bench ruling in T.N.V. Kailasa Thevar Vs. V. Ramaswami Ayyangar and Others, , which was reversed by the Supreme Court on appeal in V. Ramaswami Ayyangar and Others Vs. T.N.V. Kailasa Thevar, . Mr. Natesan ingeniously argued that the Supreme Court case could be distinguished from the present case. According to him, if, in the same property, different mortgagors have got different, separate and separable interests, and some of them are agriculturists and some of them are non-agriculturists, and a decree for the scaled down amount is passed against the agriculturists and for the unsealed amounts against the non-agriculturists, then the decreeholder can execute the decree for the scaled down amount against the agriculturists, and for the unsealed amount against the non-agriculturists, but that, in a case like this,

where the entire ownership vested in one man, Ramachandra Iyer, that rule would not apply, and the difference between the unsealed and scaled amounts would be wiped out the moment the scaled down amount was paid by the owner, the mortgagor.

To illustrate the point more clearly, this is what he says. Suppose a house is owned by five brothers, one of whom is a Judge paying Income Tax, disqualifying him from the benefit of the Madras Agriculturists Relief Act, another is a trader paying sales tax, disqualifying him from the benefit of the Madras Agriculturists Relief Act, the third is a house owner paying property tax, disqualifying him from the benefit of the Madras Agriculturists Relief Act, the fourth is an agriculturist entitled to the benefit of the Agriculturists Relief Act, and the last is an unemployed man not entitled to the benefits of the Agriculturists Relief Act, then, a decree for the scaled down amount will be passed against the fourth and a decree for the unscaled amount will be passed against the other four and the agriculturist judgment-debtor can get his one-fifth interest freed from the liability on payment of the scaled down amount; but, the other four can get their one-fifth interest each freed only by paying the unsealed amount.

But, Mr. Natesan said that this is only confined to this peculiar set of circumstances, and that it will not apply to a case, like ours, where the entire property is owned by the agriculturist judgment-debtor and the non-agriculturist judgment-debtor is only a puisne mortgagee against whom the original mortgagee could not proceed personally, or even bring a suit for redemption. He relied for this position on a Bench decision of the Calcutta High Court in Sailendra Nath Bhattacharjee Vs. Amarendra Nath Mukherjee and Others, , and the following passage at page 525 (of ILR Cal); (at p. 488 of AIR):

"A puisne mortgagee is not under any obligation to redeem the prior mortgage deed. Ordinarily, he redeems to safe-guard his own interest in the mortgaged premises. The law confers, so to say, a privilege on him which he may exercise for his own protection by conferring on him a right to redeem the prior encumbrance in a case where he apprehends squeezing out by the prior mortgagee."

8. No doubt, he is right in urging that proposition of law. But it will not help him in any way regarding this case. Here the mortgagee, Valliammai Achi, had got a decree not only against the mortgagor Ramachandra Iyer, but also against the puisne mortgagee, Hasanand, the assignor of Soundarapandian Chettiar. Soundarapandian Chettiar, therefore, after his purchase in execution of the decree in O. S. No. 146 of 1947, subsequent to getting the assignment from Hasanand, stood in the shoes of both Ramachandra Iyer, the mortgagor and owner of the properties, and Hasanand, the puisne mortgagee. Every mortgagee, including a puisne mortgagee, has an interest in property. Soundarapandian Chettiar standing in one shoe of Ramachandra Iyer and in another shoe of Hasanand, and entitled to the rights of both, also rendered himself liable regarding the liabilities of both,

Of course, Mr. Natesan is right in saying that the first mortgagee's right is only against the property, and will cease to exist the moment the property is exhausted. But here the property is not exhausted. It is very much in existence. It is worth, as already stated, some Rs. 35,000 and Soundarapandian Chettiar had paid only Rs. 21,175-8-1 to Valliammai Achi for extinguishing the liability of Ramachandra Iyer under the scaled down decree. He had also paid Rs. 3500 for getting the assignment of Hasanand.

In all, therefore, he has paid Rs. 24,675-8-1. Bv proceeding against the properties the mortgagee Valliammai Achi can therefore easily recover Rs. 10,000 and odd, whereas, under the law, she had only to recover the difference between Rs. 20,409-14-0 and Rs. 17,822-4-0, or Rs. 2587-62 nPs. (in this case, we are not allowing interest thereon). It is obvious that she can easily recover this amount by proceeding against the property in Soundarapandian Chettiar's hands.

9. Then Mr. Natesan urged that if there were no puisne mortgagee at all, or if there had been no decree against the puisne mortgagee, and there was only a decree against the mortgagor Ramachandra Iyer, the entire property would have been freed from encumbrance, and Valliammai Achi left remedyless the moment Rs. 21,175-8-1 due by Ramachandra Iyer under the scaled down decree was paid. That is so. But it will not help Soundarapandian Chettiar in this case. The might-have-beens of history are objects of interesting speculation for the theorist, but, of no use for courts and others dealing with practical things.

Again, the same thing applies to Mr. Natesan's contention that if a non-agriculturist had bought the interest of the agriculturist judgment-debtor, Ramachandra Iyer, had he been the sole judgment-debtor, Valliammai Achi could not recover anything more than the scaled down amount, and the moment it was paid, she would be left remedyless. We need not go into other such cases of might-have-beens adduced by Mr. Natesan with a great deal of resource and ingenuity.

10. Finally, Mr. Natesan urged that it will be against all law and equity to make the same person, Soundarapandian Chettiar, not liable in one capacity as the purchaser of the mortgagor's interest in the property, liable in another capacity, as the assignee from the puisne mortgagee. We see nothing contrary to justice or equity in this. Thus, a mere maternal uncle will not be liable to pay maintenance to his niece. In that capacity, the Hindu law and other civilised laws make him completely exempt.

But the moment he marries the niece, in his other capacity, as the husband of the woman, he will be made to pay maintenance under all the civilised laws. Again, the example given already of five persons interested in the house equally being liable for different amounts under the same mortgage, will show that the simple theory of Mr. Natesan will not hold good in these days of complex civilisation and complicated laws". Every day, Courts are passing scaled-down

and unsealed down decrees against different judgment-debtors. All that is not mere waste of effort.

11. So, we are satisfied that the dismissal of E. P. No. 122 of 1953 by the lower court was wrong, as also the full satisfaction entered in E. A. No. 641 of 1953, filed by Soundarapandian Chettiar, the person liable for the unsealed decree amount as the assignee of the puisne mortgagee.

12. Then the question is how much this Soundarapandian Chettiar will have to deposit to have full satisfaction entered as regards the unsealed amount. Mr. Natesan frankly confessed that there is no question of limitation or other thing enuring to the benefit of Soundarapandian Chettiar entitling him to resist the enforcement of the difference between the scaled down amount and unsealed down amount and that the only question now is whether the difference has been wiped out by law, and, if not, what he ought to pay to get full satisfaction entered.

Mr. Gopalaswami Aiyangar urged that not only the difference of Rs. 2587-62 nPs has to be paid by Soundarapandian Chettiar to Valliammai Achi for getting full satisfaction entered regarding the unsealed amount and the decree passed against the puisne mortgagee, Hasanand, but also interest on that amount at 6 per cent per annum, or at least, 3 per cent, per annum, from the date of the decree till today. We cannot agree. As already stated, the puisna mortgagee could not have been proceeded against for the debt personally, or even forced to redeem.

In the peculiar circumstances, and seeing that the law has been clarified only now, we see no reason to allow any interest till today on the debt of Rs. 2587-62, but direct interest at 6 per cent, per annum on that amount to run from today, when we have settled the point of law and determined the amount due, till the date of realisation. Once this amount with interest from today is paid by Soundarapandian Chettiar to Valliammai Achi either directly, or by deposit in the lower Court, he will be entitled to have full satisfaction entered regarding the unsealed decree amount passed against his assignor Hasanand and to have the property freed from all rights of Valliammai Achi.

13. In the circumstances, we direct all the parties to this civil miscellaneous appeal to bear their own costs.

Basheer Ahmed Sayeed, J.

14. I entirely agree with my learned brother. On the facts of this case, I do not think there could be any other decision than the one which we have come to in this appeal.

15. The mortgage decree obtained by the decree-holder Valliammai Achi in O. S. 210 of 1949 clearly provided for payment of a sum of Rs. 17,822-4-0 by the first defendant, an agriculturist, who was the mortgagor. It also provided for the payment of a sum of Rs. 20409-14-0 by the second defendant, who was the

puisne mortgagee, and a non-agriculturist. The 3rd defendant was declared to have a right of residence in the property. The present 4th defendant, who was added on later, became the purchaser of the property mortgaged to the decree-holder, in execution of the decree obtained by the second defendant, the puisne mortgagee, in O. S. No. 146 of 1947. After the purchase of the property in Court auction in execution of the said decree, the 4th defendant also became an assignee of the interest of the puisne mortgagee, the 2nd defendant, in the mortgaged property.

Therefore, the 4th defendant, who is the contesting respondent in this appeal, assumed for himself two roles (1) as a purchaser of the mortgaged property in execution of a decree obtained by the puisne mortgagee and (2) the assignee of the interests of the puisne mortgagee in the property. When the 4th defendant became the purchaser in court auction, if he had not also been the assignee of the second judgment-debtor in the original decree in O. S. 210 of 1949, surely, he would have stood on a different footing from the present position which he now occupies. By virtue of the transfer by assignment of the puisne mortgagee's interests, against whom there was a decree for the sum of Rs. 20,409-14-0, the 4th defendant also became liable to pay whatever the second defendant had to pay under the decree in O. S. No. 210 of 1949. The mere fact that he had purchased the interests of the puisne mortgagee in court auction and had also got himself assigned the interest of the puisne mortgagee by paying a further sum of Rs. 3500 it cannot be said that by his depositing of the amount due and payable by the first defendant under the decree; he would get an absolute and free title to the property purchased by him.

He would be entitled to an absolute right free from all encumbrance to the property purchased by him only if and when the claim of the decree-holder in O. S. No. 210 of 1949 was entirely wiped out. As already observed by my learned brother, Mr. Natesan appearing for the contesting respondent, fourth defendant, has not been able to show how exactly the balance of the claim of the decree-holder under the decree in O. S. No. 210 of 1949 has been wiped out. Unless and until this claim for the balance was liquidated by methods known to law, the auction purchaser cannot claim satisfaction of the entire decree in O. S. No. 210 of 1949.

That is a sum of Rs. 2587-62 and unless and until that sum was paid, the decree in O. S. No. 210 of 1949 could not be said to have been satisfied. For satisfaction of that decree, the 4th defendant cannot but have to deposit that sum. The Supreme Court ruling, relied on by the learned counsel for the appellant, did make it clear that there could be two different decrees in favour of two different persons, viz., an agriculturist and a non-agriculturist, and the decree in O. S. No. 210 of 1949, exactly provided for two different decrees representing the interests of two different persons in the property.

That being the case, and it being conceded that this contesting respondent, the fourth defendant, has become the assignee of the interests of the second

defendant in the mortgage while he was already a judgment-debtor in the sum of Rs. 20,409-14-0 if this fourth defendant had paid Rs. 17,822-4-0 together with interest accrued thereon, all that he would be entitled to would be that he has acquired tile interests of the puisne mortgagee in the property subject only to the prior mortgage. But, at the same time, it cannot be contended that he had cleared off the right and claim of the decree-holder which he had as against the assignor of the 4th defendant.

The liability of the assignor cannot be said to have been wiped out by the mere fact that the 4th defendant as purchaser and as assignee of the second defendant paid the sum that was due and payable to the decree-holder by the agriculturist mortgagor, the first defendant. Therefore, it is obvious that as long as the decree subsisted without being satisfied at least to the extent of Rs. 2587-62 nPs payable by the second defendant the puisne mortgagee, into whose footsteps the fourth defendant has come, the claim of the fourth defendant to have it declared that the entire decree has been satisfied cannot be valid and sustainable. The learned Judge was in error in having allowed the satisfaction of the decree for the entire amount by reason of the payment of Rs. 21,175-8-1 by the fourth defendant, which represented only the amount that was decreed against the mortgagor, the first defendant, and not the amount that was decreed against the second defendant, the puisne mortgagee.

16. Therefore, in order that the contesting respondent should become entitled to the entire property in his absolute right, he has to satisfy the decree that is still subsisting, in respect of which E. P. No. 122 of 1953 has been filed, The direction, therefore, that my learned brother has given that he should bring into court the balance of Rs. 2587-62 nPs is the only direction that we can think of in the circumstances of this case, and especially in view of the fact that the fourth defendant had entered into a double role, one, the assignee of the puisne mortgagee, who was himself the judgment-debtor, and the other, the purchaser of the interests of that puisne mortgagee in court auction in O. S. No. 146 of 1947. The other directions of my learned brother are justified by the circumstances of this case and I have nothing further to add to them.