

(1943) 10 MAD CK 0034
In the Madras High Court

Kruttiventi Mallikharjuna Rao and Others	APPELLANT
Vs	
Vemuri Pardhasaradhirao and Another	RESPONDENT

Date of Decision : 12-10-1943

Acts Referred:

Limitation Act, 1963 — Article 113

Citation : AIR 1944 Mad 218 : (1944) ILR (Mad) 742 : (1943) 56 LW 679 : (1943) 2 MLJ 584

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—This appeal arises out of a suit brought by the respondent for specific performance of a contract to sell certain lands or in the alternative for enforcement of a mortgage dated 18th July, 1927, for Rs. 1,500 payable with" compound interest at twelve per cent. per annum. The respondent's case was that the manager of the appellants' family one Ammiraju being otherwise unable to pay the mortgage debt entered into, an oral contract on 18th July, 1934, to sell the lands in question which formed part of the security in full discharge of the mortgage debt which by that time had swelled to Rs. 3,400. As the lands had been leased to a third party who had grown crops thereon, it was agreed that they should be delivered to the respondent as soon as the crops were harvested, and that the rent payable in respect of the lands should in the meanwhile be collected by Ammiraju and paid to the respondent. The respondent alleged that possession was accordingly delivered in 1935 and that since then he had remained in possession of the lands leasing them out and otherwise enjoying them as absolute owner. Though Ammiraju agreed to execute a sale deed whenever demanded, he and after his death the appellants put off doing so for some reason or other until in reply to the respondent's notice in 1938 one of the appellants denied the contract, the others remaining silent. Hence the suit.

2. The appellants while admitting that the lands in question were placed in the possession of the respondent alleged that such delivery was not made in

pursuance of any contract of sale which they denied but was given on the understanding that the respondent was to apply the usufruct in reduction of the mortgage debt. They further pleaded that they were agriculturists entitled to the benefits of the Madras Agriculturists' Relief Act, 1938, and that if the interest due up to 1st October, 1937, was wiped out under the Act and the net yield of the lands was appropriated towards the principal sums originally and subsequently advanced as it should be no appropriation having been actually made before 1st October, 1937, a very small amount would be found payable under the mortgage. Even if the contract was found to be true it was said that it could not be specifically enforced as such enforcement would result in great hardship to the appellants in view of the change brought about by the aforesaid Act in the position of the parties. Such relief was also barred by limitation. The appellants also raised other pleas to which it is unnecessary for the purposes of this appeal to make any reference.

3. The Court below held that the contract of sale and delivery of possession in pursuance thereof were true and had the effect of discharging the mortgage debt, as to which no question of scaling down could therefore arise under the Agriculturists' Relief Act, and that the claim to specific performance was not barred. It also overruled the other pleas raised by the appellants and passed a decree directing them to execute a sale deed in favour of the respondent conveying the lands in question and to pay the costs of the suit;.

4. In the appeal, Mr. Satyanarayana Rao, the learned Counsel for the appellants, made no attempt--and in our opinion rightly--to challenge the finding of the Court below as to the truth of the contract of sale and the delivery of possession in pursuance thereof. It is amply supported by the evidence oral and documentary and the probabilities of the case which have been reviewed at length by the learned Judge in his judgment. Mr. Satyanarayana Rao, however, took exception to the learned Judge's view of the legal effect of the contract as putting an end to the mortgage debt even before the execution of the sale deed as contemplated by the parties. His whole attempt was to show that this case really fell within the principle laid down in a recent decision of this Bench in A.S. No. 328 of 1940 where we held that a contract of sale entered into by a debtor in somewhat similar circumstances did not by itself have the effect of discharging his debt which consequently would be liable to be scaled down under the Madras Agriculturists' Relief Act if the debtor was shown to be an agriculturist, and that, therefore, the creditor could claim specific performance only on payment of the balance of the price fixed (which at the time of the contract was equivalent to the amount of the debt) after adjusting towards it the scaled down amount of the debts. It was urged that as the appellants in the present case were admittedly agriculturists entitled to the benefits of the Act, a similar result must follow, that is to say, the respondent should be asked to pay the difference between the sum of Rs. 3,400 the amount found due under the mortgage which was fixed as the price of the lands at the time of the contract and the scaled down amount of the debt as a condition of his obtaining specific performance. The contention,

however, overlooks the features of essential difference between that case and the present and cannot therefore be accepted.

5. Now, it has been pointed out in *V. Krishnaswami Rao Vs. R. Srinivasa Desikan*, that a contract between a debtor and his creditor that the former should sell and that the latter should accept any property in satisfaction of the debt may operate in one of three ways:

(1) the contract by itself may operate as an absolute discharge of the debt, giving the creditor thereafter only the remedy by way of specific performance of the contract; or

(2) it may operate only as a conditional discharge of the debt giving the creditor, in case of the debtor's default, a right to claim either performance of the contract or, if he elects to put an end to it, the payment of the debt; or

(3) the contract may be an independent transaction in the sense that it does not affect the rights of the creditor or the obligations of the debtor till the sale is actually completed.

6. In which of these ways the contract is to have operation will depend upon the intention of the parties to be gathered, in the absence of any express stipulation, from their conduct and the surrounding circumstances in the particular case.

7. In the unreported decision cited by Mr. Satyanarayana Rao it appeared, both from the terms of the contract which was reduced to writing and the subsequent conduct of the parties, that the debts were treated as still enforceable. The debits against the debtor in the creditor's books were carried forward with interest from year to year even subsequent to the contract as subsisting and recoverable debts, and the debtor recited, in promissory notes executed for subsequent borrowings from the creditor, that the principal and interest due in respect of the earlier debts had to be paid. We therefore observed:

These recitals and the entries in the respondent's accounts make it perfectly clear that it was not the intention of the parties that the debts due to the respondent should be extinguished by the executory agreement evidenced by Ex. A.

8. The position here, however, is essentially different. As pointed out by the learned Judge below, not only did the respondent after getting the lands describe them as his own in the lease deeds (Ex. P-11 series) which he took from his lessees, but Ammiraju also in his letter (Ex. P-14) referred to the lands as belonging to the respondent. Furthermore, in the respondent's accounts the entries relating to the income from the lands refer to them as having been given to him in lieu of the debt due from the appellants. As against this evidence Mr. Satyanarayana Rao stressed the absence of any endorsement of discharge on the mortgage bond and the evidence of P.W. 4 to the effect that at the time of the contract it was said that the mortgage document might be cancelled after the sale deed was executed and registered. This, however, is by no means

inconsistent with the view that the contract followed by delivery of possession was intended to operate as a conditional discharge of the debt, and the respondent not having put an end to the contract and claimed payment of the debt, there can be no question of scaling down the debt under the Agriculturists Relief Act. The other decision referred to by Nunna Satyanarayanamurthy and Another Vs. Awa Krishnamoorthy and Others, is not opposed to this view. That was a case where the mortgagors, after entering into a contract with the mortgagee for sale of some of the mortgaged lands in satisfaction of the debt, allowed such lands to be sold in execution of a money decree obtained against them, but pleaded the contract as an absolute discharge when the mortgagee brought a suit to enforce the mortgage. The Court, while recognising that an executory contract could operate as a discharge of a mortgage debt, held that there was no presumption that it did so and that there was nothing to show that the mortgagee had given up his rights under the mortgage. There was no suggestion that the contract operated as a conditional discharge of the mortgage as such a plea would be of no avail, for, even if the contract was intended to have such effect, the mortgagors having disabled themselves from performing the contract, the mortgagee was free to put an end to it and claim payment of the mortgage debt. The decisions relied on for the appellants are thus of no assistance to them and we are of opinion that the respondent is entitled to a decree for specific performance without payment of any sum to the appellants.

9. As regards the plea of limitation, the only other point argued before us, we think, that there is no substance in it. It was said that according to the evidence of the respondent himself and his witnesses, the contract must be regarded as one with a date fixed for its performance within the meaning of Article 113 of the Limitation Act. The contract was entered into on 18th July, 1934, and what the witnesses stated was that Ammiraju promised to execute the sale deed when both of his brothers (the first and second appellants) or one of them, the second appellant--there is some discrepancy on the point--who were studying elsewhere returned to the village for the next vacation, that is, in May-June, 1935. This is much too indefinite to be regarded as fixing a "date" for the performance of the "contract, and we agree with the lower Court that the period of limitation must be computed from the date of refusal to perform, that is, the date of the second appellant's reply notice sent on 9th August 1938, wherein he denied the contract. The suit was instituted well within three years from that date. The appeal fails and is dismissed with costs.