
(1982) 02 MAD CK 0023
In the Madras High Court

K.V.S.P. Subramanian Chettiar

APPELLANT

Vs

The Revenue Divisional Officer and Others

RESPONDENT

Date of Decision : 02-02-1982

Acts Referred:

Citation : (1983) ILR (Mad) 222 : (1984) 97 LW 466 : (1982) 2 MLJ 375

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—The petitioner herein had advanced a sum of Rs. 5,000 to the third respondent herein on mortgage of his property on

14th December, 1964. In enforcement of that mortgage the petitioner herein filed a suit O.S. No. 86 of 1979 on the file of the Court of the

District Munsif, Arantangi, for half the amount, as per the Tamil Nadu Act XL of 1978, and another suit O.S. No. 128 of 1981 for the balance of

the amount on the file of the same District Munsif's Court, against the third respondent, and those two suits are said to be pending.

2. In the meanwhile, the debtor, the third respondent, filed an application before the Special Tahsildar (Debt Relief), Arantangi, u/s 6 of the Tamil

Nadu Debt Relief Act, 1980, hereinafter referred to as the Act, claiming benefits under the Act and granting a certificate of redemption of the

mortgage in question. The second respondent, the Special Tahsildar, held that the debtor owned properties worth only about Rs. 23,500, and that

his annual household income was only Rs. 1,800. In that view, he granted a redemption certificate u/s of 6(2)(a)(i) of the Act. The matter was

taken in appeal by the petitioner to the first respondent, the Revenue Divisional Officer, Arantangi the appellate authority. In his order dated 14th

June, 1981, the first respondent affirmed the order of the second respondent and dismissed the appeal. In this writ petition, the order of the appellate authority confirming the order of the original authority has been challenged on the ground that the orders of both the authorities have been passed without jurisdiction and that in any event the conclusion arrived at by both the authorities below that the third respondent is entitled to the benefits of the Act cannot be sustained.

3. It is pointed out by the learned Counsel for the petitioner that in cases where a creditor has filed a suit for the enforcement of a mortgage executed by a debtor, the debtor has to approach the civil Court for adjudication of his claim for entitlement under the provisions of the Act and that he cannot approach the authorities constituted under the Act for such a decision. According to the learned Counsel for the petitioner, Sections 5 and 6 of the Act can apply only to cases where a creditor has not approached the civil Court by filing a suit to enforce his claim as against the debtor, as otherwise the authorities constituted under the Act will be usurping the functions of the civil Court, which is not contemplated by the provisions of the Act. Section 4 does not specifically say that even in respect of matters pending before a civil Court, the Tahsildar can entertain an application u/s 6 of the Act. It is no doubt true that Section 4(1)(b) of the Act says that no civil Court shall entertain any suit or other proceeding against the debtor for the recovery of any amount of such debt and Section 4(1)(c) says that all suits and other proceedings pending at the commencement of the Act against any debtor for the recovery of any such debt shall abate. However, the prohibition on the civil Court to entertain a suit and the abatement of all existing suits and other proceedings will arise only if the debtor is found entitled to the benefits of the Act. Therefore the civil Court wherein suits or other proceedings are pending against the debtor has to come to a conclusion as to whether the debtor is entitled to the benefits of the Act or not. Sections 5 and 6 of the Act do not use a nanobstante clause giving the Tahsildar a power to over-ride the decision of the civil Court as regards the question whether a party before the civil Court is a person entitled to the benefits of the Act, and the Tahsildar acting u/s 5 or Section 6 of the Act cannot be expected to render a decision on the question as to whether the debtor is entitled to the benefits of the Act

and call upon the civil Court to abide by that decision. As pointed out by Ratnam, J., in *Perumal v. Chinna Kuppanna Gounder*, the Tahsildar

acting u/s 5 or 6 cannot assume the functions of a civil Court, which has to necessarily determine as a jurisdictional issue as to whether the party

before it is a debtor entitled to the benefits of the Act, for deciding the question of maintainability of the suitor for deciding the question of

abatement referred to above. Admittedly there is no express provision taking away the jurisdiction of the civil Court to decide the question as to

whether a particular person is entitled to the benefits of the Act or not. In a suit or proceeding initiated by a creditor in a civil Court, the Court has

to decide the question as to whether the defendant in that suit or proceeding is a debtor as defined in the Act, as a jurisdictional issue and such

jurisdictional issue has to be decided only by the Court itself before pronouncing its decision on the question of maintainability of the suit or

proceeding or on the question of abatement. In this view of the matter, we have to hold in the present case that as the creditor has already filed two

suits for recovery of the mortgage amount and those suits are pending, the third respondent herein, who is the defendant in those suits, has to seek

an adjudication before the civil Court On the question as to whether he is entitled to the benefits of the Act and if the Court comes to the

conclusion t1 at he is entitled to the benefits of the Act, then the Court has to dispose of the suits in accordance with Section 4 of the Act.

4. The writ petition is therefore allowed and the orders of respondents land 2 are quashed. The third respondent is however given liberty to

approach the civil Court for adjudication on the question as to whether he is entitled to the benefits of the Act or not. There will be no order as to

costs.