
(1965) 11 MAD CK 0043
In the Madras High Court

Mangalathachi

APPELLANT

Vs

K.R. Kalyanasundara Mudaliar and Another

RESPONDENT

Date of Decision : 02-11-1965

Acts Referred:

Tamil Nadu Cultivating Tenants Protection Act, 1955 — Section 2(a)

Citation : (1967) ILR (Mad) 84 : (1966) 79 LW 440 : (1966) 2 MLJ 49

Hon'ble Judges : P.S. Kailasam, J

Bench : Division Bench

Judgement

P.S. Kailasam, J.—The plaintiff is the appellant. She executed a mortgage bond in respect of a land R.S. No. 324/1, an extent of 33 cents in Thirupirambiam village on ,15th April, 1944, in favour of one Mangalam Anni for Rs. 200. It is admitted that the mortgage was taken for the benefit of the first defendant in the name of Mangalam Anni. Possession was delivered to the first defendant. The plaintiff paid a sum of Rs. 200 to the first defendant which according to him was due in respect of the mortgage on 30th April, 1959. The first defendant did not deliver possession of the suit land. Subsequently the plaintiff claimed for a return of Rs. 100 on the ground that she is entitled to the benefits of the Madras Agriculturists Relief Act. It is unnecessary to consider that question of benefit under the Madras Agriculturists Relief Act as it is not before me. Possession was not delivered to the plain-tiff, though the receipt of the sum of Rs. 200 and discharge of the mortgage was admitted by the first defendant. According to the first defendant he leased the suit land to the second defendant and on the discharge of the mortgage he directed the second defendant to attorn the lease to the plaintiff. According to the second defendant, he took the land on lease under the first defendant, the usufructuarv mortgagee and continued to be in possession. After the discharge of the mortgage he attorned the lease to the plaintiff. It was the case of the defendants that the plaintiff accepted the second defendant as a tenant. The second defendant raised the contention that he became entitled to the rights of a cultivating tenant on taking a lease from the first defendant, that subsequently he became a tenant of the plaintiff, and therefore, he cannot be

evicted under the Madras Cultivating Tenants Protection Act. The trial Court negated the contentions of the defendants and gave a decree as prayed for by the plaintiff. On an appeal, the lower appellate Court,, while confirming the finding of the trial Court that the mortgage had been discharged, held that the plaintiff is not entitled to possession, as the second defendant acquired the rights of a cultivating tenant.

2. In coming to the conclusion that the second defendant is a cultivating tenant, the lower appellate Court was inclined to accept the case of the defendants that the second defendant became a tenant under the plaintiff herself. This finding is recorded in paragraph 12 of the lower appellate Court's judgment. The evidence of the first defendant is that he asked the plaintiff to take possession of the land from the second defendant who was the lessee. It is the case of the first defendant that the plaintiff agreed to do so. But the plaintiff vehemently denied that she accepted the second defendant as her tenant. It has not been found that the plaintiff accepted any rent from the second defendant. It is also noteworthy that the second defendant has not stated in his evidence that the plaintiff accepted the rent or attornment of the tenancy by him. The inference of the lower appellate Court that the plaintiff agreed to accept the attornment is not supported by the evidence and is based on surmises. The fact that the plaintiff did not ask for possession from April, 1959 to October, 1960, would not prove the case of the second defendant that the plaintiff accepted him as his tenant. As already pointed out, the second defendant did not say that the plaintiff accepted him as a tenant. The lower appellate Court has extracted the evidence of the first defendant that he asked the plaintiff to take possession of the land from the second defendant, and the plaintiff agreed to do so, and that he also directed the second defendant to pay rent to the plaintiff. The lower appellate Court has not specifically accepted this piece of evidence. In the absence of a specific finding regarding the evidence of the first defendant and in the absence of the second defendant's evidence that the plaintiff accepted him as his tenant, the finding which is purely based on surmises cannot stand.

3. The question that arises for consideration is whether a tenant who was put into possession of the land by the usufructuary mortgagee, is entitled to claim the rights of a cultivating tenant, even after the discharge of the mortgage. The plaintiff attempted to deny the fact of the first defendant admitting the second defendant as his tenant during the continuance of the mortgage. But on this aspect the lower Court has recorded a finding that the first defendant admitted the second defendant as his tenant, when he was serving outside Thirupirambiam village. The finding is supported by the evidence of defendants 1 and 2 and the letters (Exhibits B-1 to-B-3). The finding which is one of fact cannot be disputed in Second Appeal. Therefore, the contention of learned Counsel for the appellant, Mr. Venkatarama Iyer is that, the second defendant is not entitled to rights of a cultivating tenant, as he was not admitted into possession under an express or implied tenancy agreement with the landlord. The learned Counsel for the appellant submitted that the definition of the word "

cultivating tenant" would indicate that the tenancy agreement must be with the landlord and not with the mortgagee who is a transferee only of a portion of the right of the landlord. On the other hand, the learned Counsel for the respondents submitted that the definition of the word "cultivating tenant" does not require that the tenancy agreement, express or implied should be with the landlord and that, if the tenant was inducted into possession lawfully by a person entitled to possession as by a mortgagee in this case, the second defendant would be a cultivating tenant.

4. An usufructuary mortgagee is entitled to retain possession of the property mortgaged to him and to receive rents and profits accruing from the property till the payment of the mortgage money. The mortgagor is entitled to recover possession when the mortgage is discharged. The right of the mortgagee in possession to admit a tenant cannot be disputed. The mortgagee cannot confer on his transferee a better title than what he possesses and therefore any lease by the mortgagee would cease when the mortgage is redeemed. But the Courts have recognised that any agricultural lease created by the mortgagee would be binding on the mortgagor even though the mortgage had been redeemed, provided the mortgagee as a prudent owner entered into the lease agreement in the ordinary course of his management. This is in the nature of an exception to the rule that the mortgagee cannot confer a better title than what he has.

5. The Madras Cultivating Tenants Protection Act, 1955, was enacted to protect cultivating tenants in certain areas in the State of Madras from unjust eviction. The cultivating tenant is defined as follows:

2 (a) "Cultivating tenant" in relation to any land means a person who carries on personal cultivation on such land, under a tenancy agreement, express or implied, and includes-

(i) any such person who continues in possession of the land after the determination of the tenancy agreement....

Landlord is defined thus:

2 (e) "Landlord" in relation to a holding or part thereof means the person entitled to evict the cultivating tenant from such holding or part....

The definition of the word "cultivating tenant" does not expressly require that the tenancy agreement, express or implied, should be with the landlord. In *Ramaswami Naidu v. Marudaveera Moopan* (1959) 1 M.L.J 25 Balakrishna Ayyar, J., rejecting the contention that the tenancy agreement need not be with the owner of the land, held that a tenancy agreement meant an agreement creating tenancy and observed:

A tenancy agreement means an agreement creating a tenancy and when we speak of a tenancy we normally understand that there is on the one side a landlord and, on the other side a tenant or lessee.

The same view was expressed by Ramachandra Iyer, J. (as he then was) in C.R.P. No. 604 of 1957, where he observed:

The agreement contemplated in Section 2(a) of Madras Act XXV of 1955 whether it was, express or implied should be with the landlord directly.

This view has not been subsequently differed from, though a Division Bench in Kathaperumal Padayachi Vs. Muthiah Odayar, did not share the view regarding the status of a sub-tenant as against the chief tenant. The view, therefore, of the Madras High Court is that the tenancy agreement, express or implied, must be with the landlord. In *Dahya Lola v. R.M. Abdul Rahim* (1963) 2 S.C.J. 450 the Supreme Court considered the rights of a person let into possession by the usufructuary mortgagee and held that the tenant is entitled to the status of a tenant under the Act. In the case before the Supreme Court, the owners of a property mortgaged it to one Umiyashanker with possession. Shortly after the mortgage, the mortgagee inducted one Mohammed Abdul Rahim as a tenant on the land. The owners of the land applied to the Court for redemption of the property, and by an award made by compromise between the parties, it was declared that

the land in dispute was in possession of Mohammed Abdul Rahim as tenant of the mortgagee, and that the mortgagor had the right to take possession of the land from the said tenant.

Mohammed Abdul Rahim was evicted. On appeal the High Court of Bombay ordered possession of the land to be restored to Mohammed Abdul Rahim declaring that he was entitled to continue in occupation as a tenant on the same terms on which he was a tenant of the mortgagee. Section 4 of the Bombay Tenancy and Agricultural Lands Act is in the following terms:

A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not-(a) a member of the owner's family, or (A) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under the personal supervision of the owner or any member of the owner's family, or (c) a mortgagee in possession.

Under the section a person is deemed to be a tenant if he is cultivating any land belonging to another person, provided he is not a member of the owner's family or a servant on wages or a mortgagee in possession. The Supreme Court, construing the section, held that a person who is deemed to be a tenant is manifestly a class apart from the tenant who holds lands on lease from the owner. Such a person would be invested with the status of a tenant, if three conditions are fulfilled- (a) that he is cultivating land lawfully, (b) that the land belongs to another person, and (c) that he is not within the excepted categories. The Supreme Court rejected the contention that a person can be said to be lawfully cultivating land within the meaning of Section 4 only if he has derived his right to cultivate directly from the owner of the land and not from some other

person who has a limited interest, such as a mortgagee from the owner. But the section in the Madras Cultivating Tenants Protection Act is differently worded. Under the Madras Act, a cultivating tenant is defined as a person carrying on personal cultivation under tenancy agreement express or implied, whereas under the Bombay Act a person lawfully cultivating any land belonging to another person shall be deemed to be a tenant. Under the Madras Act there should be a tenancy agreement, express or implied; but under the Bombay Act it is enough if the person lawfully cultivates any land belonging to another. Thus a tenant under the usufructuary mortgagee who has right to be in possession would be a cultivating tenant under the Bombay Act. The Bombay Act does not require that the person should be cultivating under the landlord. It is sufficient if he is cultivating the land of another person lawfully. Cultivation by a tenant of a land in possession of the usufructuary mortgagee or lessee would satisfy the requirements of the Bombay Act; whereas it will not satisfy the definition of a cultivating tenant under the Madras Act. As already pointed out, the Madras High Court has taken the view that the tenancy agreement must be with the landlord. A person would not normally be entitled to transfer any right to which he is not entitled. An usufructuary mortgagee can only be in possession till the redemption of the mortgage. He cannot confer the right on a tenant to be in possession for a longer period. To hold that the mortgagee can confer on his tenant the right of a cultivating tenant would mean that he can transfer higher rights than he has and deprive the mortgagor of his right to possession. Unless the words in the statute are clear and specific this construction will not be justified.

6. The learned Counsel for the respondents relied on Chinnappa Naicker Vs. A.P.C. Umapathy Nayagar, and Serang Abdul Khadir Vs. Rajagopala Pandarayar and Others, for the contention that a power-of-attorney agent and receiver would come under the definition of landlord. Those decisions are obviously not applicable. In this case the lease is by the usufructuary mortgagee. He does not represent the landlord and he has got only part of right of the landlord. The learned Counsel for the respondents also relied on a decision of the Supreme Court in Mahabir Gope v. Harbans Narain Singh (1952) S.C.J. 292 in which it was held that where all the zamindari rights were given to the mortgagee, it might be possible to infer on the proper construction of the document that he could settle lands with tenants in the ordinary course of management, and that the tenants might acquire certain rights in the land in their capacity as tenants. This case has no application to the facts of the present case as it relates to zamindari tenure. On a discussion of the entire case-law cited before me, I have no hesitation in coming to the conclusion that a lessee under the usufructuary mortgagee is not entitled to claim the rights of a cultivating tenant as against the mortgagor subsequent to the redemption of the mortgage.

7. The appeal is allowed with costs. The judgment and decree of the lower appellate Court are set aside and those of the trial Court are restored. No leave.