

(1942) 01 MAD CK 0027
In the Madras High Court

N. Namberumal Chetty

APPELLANT

Vs

P. Ramayya Naidu alias Jayaramakrishna Naidu

RESPONDENT

Date of Decision : 29-01-1942

Acts Referred:

Citation : AIR 1942 Mad 602 : (1942) 55 LW 298 : (1942) 1 MLJ 561

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal is preferred against the decision of our learned brother Moekett, J., on a notice of motion preferred by a judgment-debtor under Sections 19, 20 and 23 of Madras Act IV of 1938, praying the Court for reliefs in respect of a decree on mortgages. The decree in question was passed on the 3rd August, 1937, and made absolute in November of that year. The motion was resisted on the ground that the debtor was precluded by proviso C to Section 3 (ii) of Act IV from claiming to be an agriculturist, he having been assessed to property tax in the City of Madras on property of a rental value above the prescribed limit.

2. The facts are that, during the two years preceding 1st October, 1937, the debtor was the owner of a number of houses in Madras which form part of the hypotheca of the mortgages on which the decree was passed. The mortgage suit was filed in 1934 and a receiver was appointed under Order 40, Rule 1, CPC at the instance of the mortgagee. The receiver was during the relevant period in possession of all these houses and he actually paid the property tax thereon. Of the houses, one house No. 46, Pusala Gengu Reddi Street, was actually shown in the municipal assessment register in the name of the receiver and this house was valued at a rental value of Rs. 918 per annum. The other houses stood in the names of three different individuals, one being the judgment-debtor's adoptive mother, another his adoptive aunt and the third a male relative of the judgment-debtor. The mother and the aunt were both dead before the relevant period; the male relative was living. The position therefore is that the municipal

assessment register showed the house property owned by the judgment-debtor in the names of four individuals, one being the receiver, another being a living relative of the judgment-debtor and the other two being deceased relatives of the judgment-debtor. If the payment of tax by the receiver in respect of the property standing in the receiver's name can be deemed to amount to an assessment of the judgment-debtor himself, the value of that item is sufficient and it is unnecessary to consider the assessment in respect of the other items.

3. Our learned brother Mockett, J., has held that although a receiver appointed u/s 69 (a) of the Transfer of Property Act is deemed to be the agent of the mortgagor, a receiver appointed in a mortgage suit under Order 40, Rule 1, holds the properties for the benefit of the mortgagee alone and he bases this view upon a decision of Madhavan Nair, J., in *Sri Rajah Rao Venkatakuruma Mahipathi Surya Rao Bahadur Garu, the Maharaja of Pittapuram Vs. Gokuldoss Goverdhanadoss and Others*, a decision which has come in for considerable criticism by the Bench which decided *Ponnu Chettiar v. Sambasiva Aiyar* (1932) 64 M.L.J. 682 : ILR Mad. 546. It is pointed out in this latter decision that a simple mortgagee by getting a receiver appointed in the course of the suit cannot enlarge his security and such a receiver is, like a receiver in other cases, appointed for the protection of the property for the benefit of all the parties to the suit in accordance with their respective rights, as they may eventually be established. No doubt the mortgagee has a certain preferential claim to the profits received in the Court, and to that extent it may be said that the appointment of the receiver is for the benefit of the mortgagee; but it does not follow that the receiver is the representative of the mortgagee and not the representative of the mortgagor, of that the acts of the receiver are acts done only on behalf of the mortgagee and not on behalf of the mortgagor. We need only refer to the decision in *Govinda Pillai Vs. Dasai Goundan and Another*, following the case of *Chinnery v. Evans* (1864) 11 H.L.C. 115 : 11 E.R. 1274, as an illustration of the true position of a receiver, as seen from the effect of a payment by the receiver, in saving limitation. It seems to be well established ;that a payment towards interest under the mortgage by the receiver will save limitation as against the mortgagor. We have no doubt that the true position is that a receiver appointed under Order 40, Rule 1, in a mortgage suit represents whoever may be found ultimately entitled to the property as the result of the suit. When a receiver in such a suit pays property tax on the property, he certainly is not paying that property tax on his own individual account. We had in a recent case--A.A.O. No. 339 of 1938--to consider a contention that a payment of poruppu by the trustee of a charity would disqualify the trustee in his individual capacity from claiming the benefits of Act IV of 1938, having regard to proviso D to Section 3 (ii). We then pointed out that a differentiation must be made with reference to the capacity in which the person makes the payment and that a payment made by a person in respect of properties held and managed by him on behalf of a charity, must be regarded as a payment made by a different person. Applying the reasoning of that case to

the present facts, when the receiver was assessed to property tax and paid that tax, he was not so assessed in his individual capacity. It follows that he was assessed as a representative of somebody else. Mr. Radhakrishnayya has contended that he was assessed as an officer of Court with reference to properties in Custodia legis That is no doubt true; but the Court was under no liability to pay this tax and when the receiver paid the tax, though he did sounder the orders of Court, he did not pay the tax as the representative of the Court or on behalf of the Court. He was assessed and he paid the tax in his capacity as the representative of whoever might ultimately be found to be the owner of the property as the result of the pending litigation. On the facts of the suit out of which this application arose, it would appear that besides the mortgagee-plaintiff, there were certain puisne mortgagees who were parties and there was a third party claimant, the ninth defendant. The judgment in the suit affirmed the ownership of the mortgagor and rejected the claim of the ninth defendant. That judgment was pronounced before Act IV of 1938 came into force. Though the receiver was directed by the Court to pay the surplus profits of the land into Court, presumably for the benefit of the mortgagee, his first duty was to pay the taxes on the property out of the profits. He was not to pay those taxes in his personal capacity nor was he to pay those taxes in discharge of any liability imposed upon the Court whose officer he was. He was to pay those taxes in discharge of a liability imposed by law upon the-owner of the property and the owner must necessarily be the person who might ultimately be found entitled to the property as the result of the suit. The ownership of this property was only questioned so far as the ninth defendant's claim was concerned . All the mortgagees necessarily must support the title of their mortgagor. The ninth defendant was found not to be entitled to the property. It seems, therefore, to follow that the payment of the tax by the receiver was a payment on behalf of and as representative of the mortgagor who is the applicant here.

4. It has been suggested that, as the result of execution, the whole of the hypotheca has been swallowed up without satisfying the mortgages and that the interest of the nominal owner in the property was negligible. That seems to us not to affect the question. At the time when these taxes were paid, the only person entitled to the property and the only person liable to pay the tax was the mortgagor or his representative for that purpose, the receiver in the suit. When the receiver was assessed and when he paid the tax, it was primarily as the representative of the mortgagor that he made the payment. Since we have held that a payment by a person in the position of a trustee Will not affect that trustee's personal eligibility to ask for the benefits of Act IV of 1938, it seems to us to follow that the assessment of a trustee must be deemed to be an assessment of the estate which he holds as trustee; and similarly the assessment of a receiver to property tax must be deemed to be the assessment of the estate of the owner of the property and the payment in pursuance of that assessment must be deemed to be a payment by that owner. In this view we hold that the assessment of the receiver to property tax on a property of an

annual rental value exceeding Rs. 600, is the assessment of the owner of that property on whose behalf the tax was paid and that therefore the applicant was disqualified by proviso C to Section 3 (ii) from claiming to be an agriculturist.

5. In the result, therefore, we allow the appeal with costs and set aside the order of the learned Judge who heard the application . We fix the advocates' fee at Rs. 100 in the appeal.