

(1941) 12 MAD CK 0008
In the Madras High Court

Pachigola Satyanarayanamurthi (died) and Others	APPELLANT
Vs	
Karatam Sathiraju and Others	RESPONDENT

Date of Decision : 16-12-1941

Acts Referred:

Transfer of Property Act, 1882 — Section 60

Citation : AIR 1942 Mad 525 : (1942) 55 LW 280 : (1942) 1 MLJ 506

Hon'ble Judges : Patanjali Sastri, J

Bench : Division Bench

Judgement

Patanjali Sastri, J.—These appeals arise out of two suits brought by respondents 1 to 3 (hereinafter referred to as the mortgagors) for

redemption of two mortgages executed by them in favour of the appellant. The first mortgage was for a sum of Rs. 10,000 and the second for Rs.

7,300, the same property, 71 acres 40 cents of land, being mortgaged in both cases. The mortgagors sold 43 acres 40 cents out of the mortgaged

property to the fourth respondent (hereinafter referred to as the purchaser) for a sum of Rs. 34,488 out of which Rs. 11,694 was directed to be

paid in full discharge of the second mortgage referred to above and Rs. 19,680 was to be paid in part payment of the first mortgage. The

purchaser, however, failed to carry out these directions and both the mortgage debts remained outstanding when the Madras Agriculturists' Relief

Act came into force. The mortgagors then brought these suits for redemption of the mortgages, claiming the benefit of the Act as agriculturists and

depositing in Court the amount which they alleged to be due under the mortgages when scaled down in accordance with the provisions of that Act.

The Court below has passed decrees for redemption as prayed for in both the suits, negating the appellant's contention that the debts should not

be scaled down so far as the purchaser was concerned as the latter was not an agriculturist within the meaning of the Act, and the question for

determination in these appeals is whether the decrees in question were rightly made.

2. It is contended that the Court below was wrong in allowing the mortgagors to redeem the mortgages as a whole by payment only of the

mortgage moneys as scaled down under the Act without providing that the properties in the hands of the purchaser should be redeemed only on

payment of the entire amounts due under the mortgages. It was said that otherwise the purchaser who is a non-agriculturist would be benefited by

the scaling down of the debts, a result not contemplated by the Act. Reliance was placed upon the decision in C.S. Ramier Vs. B.N. Srinivasiah,

and in. Arumugham Pillai v. Sadasivam Pillai C.R.P. No. 1655 of 1940 as supporting this contention. These decisions no doubt establish that in a

suit to enforce a mortgage brought against the mortgagor who is not an agriculturist and the alienee of part of the hypotheca who is an agriculturist a

decree can be passed for the full amount due against the party who is a non-agriculturist while scaling down the mortgage debt as against the party

who is an agriculturist. But they do not, in our opinion, assist the appellant. There it was a suit for sale and the purchaser who was an agriculturist

claimed and was allowed the benefit of the Act, it having been held that his liability qua purchaser to pay the mortgage money was a debt within the

meaning of the Act, while as against the mortgagor who was not an agriculturist, a decree for the full amount of the debt was passed. In the present

case, however, the mortgagors are agriculturists and they seek to redeem the property u/s 60 of the Transfer of Property Act which (so far as it is

material here) provides :

At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the

mortgage) money, to require the mortgagee,

(a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of

the mortgagee,

(b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the

mortgagor, either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished,

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a

proportionate part the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such

mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

The mortgage money being liable to be scaled down under the Madras Agriculturists' Relief Act, it follows from the provision cited above that, on

payment of the scaled down amount, the mortgagors are entitled to call upon the mortgagee to deliver up the mortgage deed duly discharged or in

other words to redeem the mortgage as a whole. This conclusion is in accord with the decision in Marina Ammayi Vs. Mirza Bakhar Beg Saheb

and Others, which indeed rules this case. There a decree for redemption of a mortgage was obtained by the mortgagors and transferees of

portions of the hypotheca suing as co-plaintiffs. The mortgagors were and the purchasers were not agriculturists and the question arose whether the

decree as a whole could be scaled down even as against the purchasers. It was held that there was nothing in the Act to prevent the decree being

scaled down as a whole and it was pointed out that the Court would not, by so scaling down the decree, be benefiting the non-agriculturist

purchaser as the latter might have to refund the portion of the purchase money which as a result of the scaling down, he would not have to pay to

the mortgagee. The position here is, in our opinion, very similar. As between the mortgagors who sold a portion of the hypotheca under Ex. II and

the purchaser, the sale was free from the encumbrances except to the extent of the balance due under the first mortgage after deducting the sum of

Rs. 19,680, which the purchaser was directed to pay towards that mortgage. The position therefore is that the amount of Rs. 34,488, in the hands

of the purchaser really represents part of the purchase money retained by him for payment to the appellant mortgagee (see Section 55 (5) (b) of

the Transfer of Property Act), and if the purchaser did not have to pay the full

amount thus reserved with him owing to the mortgage debts being scaled down at the instance of the mortgagors, he would be liable to return to the latter the portion of the purchase money remaining unpaid (see *Ragunatha Chariar Vs. Sadagopa Chariar*, . This, in effect, is admitted by the purchaser in the written statements which he filed in the suits wherein he supported the allegations in the plaint that part of the purchase money was kept in deposit with him for the benefit of the mortgagors for payment to the appellant on their behalf. It is therefore not correct to say, as was argued for the appellant, that the Court by allowing the mortgagors to redeem the mortgages as a whole was conferring a benefit upon a non-agriculturist contrary to the intendment of the Madras Agriculturists' Relief Act. On the other hand, if the purchaser in such circumstances is made to pay the entire sum reserved with him for payment under the sale deed which was executed before the passing of the said Act, the mortgagors would stand ultimately deprived of the benefit which as agriculturists they are undoubtedly entitled to claim under the Act.

3. It was then said that the purchaser having agreed with the appellant to pay the amounts which he retained out of the purchase money, decrees should have been passed against him personally for such amounts in these suits without driving the appellant to another suit for the enforcement of such liability. The allegations made in this behalf in the appellant's written statement are by no means clear. What appears to have been pleaded is that even before the sale deed was executed, there was an arrangement between the mortgagors, the purchaser, and the appellant whereby the mortgagors ceased to be liable under the mortgage and the purchaser bound himself to pay the sums retained by him to the appellant, who, for his part, undertook to release the properties purchased on such payment. This plea is quite contrary to the recitals in the sale deed (Ex. II), which clearly contemplate the continuance of the mortgagors' liability and was indeed not put forward in that form before us by the learned Counsel for the appellant who merely suggested a new promise made by the purchaser to the appellant involving personal liability to pay the sums specified in the sale deed. The Court below has not gone into this question as in its view such an agreement even if true would give rise to a separate cause of action against the purchaser on which no decree could be passed in favour of the

appellant in these suits for redemption brought against both of them. We are inclined to agree with this view and accordingly leave the question open for determination in other proceedings.

4. In the result, the appeals fail and are dismissed. The appellant will pay the costs of the mortgagors and the purchaser, one set for each in each of

the appeals except the fees for the advocate which will be paid only in A.S. No. 118 of 1939.