

(1950) 11 MAD CK 0035
In the Madras High Court
Case No : A.A.A.O. No. 117 of 1950

Palakkadvath Chanthu's children Achuthan and Others	APPELLANT
Vs	
Poothakandiyil Choyi	RESPONDENT

Date of Decision : 29-11-1950

Acts Referred:

Malabar Tenancy Act, 1930 — Section 3

Citation : AIR 1952 Mad 704 : (1951) 1 MLJ 507

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : K. Bhashyam and M.C. Sridharan, for the Appellant; A.G. and K.N. Karunakaran, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddi, J.—The main question that falls to be decided in this case is whether the usufructuary mortgagee who parted with a portion

of the mortgaged property is an intermediary within the meaning of Clause (j) of Section 3 of the Malabar Tenancy Act so as to be entitled to the

benefits of the provisions of Act 24 of 1949 as amended by Act VIII of 1950. The judgment-debtors in O. S. No. 309 of 1942 are the appellants

in the appeal.

2. The circumstances that culminated in this Civil Miscellaneous Second Appeal may be briefly mentioned. The respondents herein filed a suit O.

S. No. 309 of 1942 for redemption of the usufructuary mortgage created by them in favour of the appellants. The suit was contested on various

grounds but ultimately it was decreed and the time for redemption was fixed. While this matter was pending appeal in this Court, an attempt was

made to have the proceedings in appeal stayed by making a deposit u/s 4 of Act

24 of 1949. But it proved infructuous as no deposit was made in time as contemplated by provision of that section. Ultimately when the plaintiff decree-holder levied execution the appellants applied for stay of execution of the decree u/s 4 (1) of the Act 24 of 1949.

3. This was opposed by_ the decree-holder on the ground that the provisions of Section 4 (1) of Act 24 of 1949 as amended by Act 8 of 1950

have no application to a decree for redemption of the usufructuary mortgage, that the judgment-debtor having only sub-mortgaged a portion of the

property mortgaged, this case is not governed by the provisions of Section 4 (1) of Act 24 of 1949 or Section-sections (2-A) or (2-B) of Section

4 as amended by Act 8 of 1950 as they apply only to a case where the usufructuary mortgagee has leased out the property to a third party and

that in any event the judgment-debtor is not entitled to the benefit of the Act as he has not parted with the entire extent of land mortgaged to him

and therefore does not come within the meaning of ""intermediary"" u/s 3 (j) of the Malabar Tenancy Act. These objections found favour with the

trial Court which dismissed the application of the judgment-debtors for a stay of execution of the decree.

4. On appeal the district Judge while Upholding the contention of the judgment-debtor that the provisions of Section-sections (2-A) or (2-B) of

Section 4 of Act 24 of 1949 are applicable to a decree for redemption of the mortgage confirmed the decision of the trial Court agreeing with his

reasoning on other aspects of the case. The present appeal is filed against the decree and judgment of the District Judge.

5. In this appeal Mr. K. Bashyam, the learned counsel for the appellants, raised three contentions. First is that the lower Court, having held that the

trial Court erred in assuming that the usufructuary mortgagee has only sub-mortgaged the property, proceeded on the basis that the provisions of

these enactments have no application to the case of a sub-mortgage without either considering himself that point on the material on record or calling

for a finding. It was next argued that even assuming that the judgment-debtor only sub-mortgaged the property mortgaged to him still the appellant

could claim relief under the provisions of Act 24 of 1949 as he comes under the definition of an intermediary. And lastly he contended that the

expression ""such possession"" in the definition of ""intermediary"" in Clause (j)

of Section 3 of the Malabar Tenancy Act covers not only the case where a mortgagee has parted with the possession of entire extent of the land mortgaged to him but the case of a mortgagee who has transferred only a portion of the land. According to him the expression "'such possession'" does not refer to the extent of the possession but only to the nature of the possession.

6 On the other side the learned Advocate General seeks to support the judgment of the Courts below on alternative grounds, namely, that the provisions of Section-sections (2-A) or (2-B) of Section 4 as amended by Act 8 of 1950 have no application to a decree for redemption of the usufructuary mortgage.

7. I shall first take up the last argument of Mr. Bashyam, the learned counsel for the appellants, as that will dispose of this appeal. An answer to this question depends upon the interpretation to be put to the expression "'such possession'" in the definition of an intermediary in Section 3 (j) of the Malabar Tenancy Act.

8. Mr. Bashyam urges that the expression "'such possession'" can only have reference to the kind of possession which the mortgagee himself had and cannot refer to the entire extent of the land. I am not able to understand what the nature of possession can mean in that context. It can only have reference to the extent of the land which is in his possession. In order to appreciate the relative contentions of the parties it is useful to set out the relevant provisions of the Section 2 of the Madras Act 24 of 1949. Section 2 (b) of the Act says:

The expressions "Eviction", "Holding", "rent" and "tenant" shall in relation to cases governed by the Malabar Tenancy Act 1929 have the same meanings respectively as in that Act.

Now I shall refer to definition of tenant as given in the Malabar Tenancy Act.

"Tenant" means any person who has paid or has agreed to pay rent, or other consideration, for his being allowed by another, to enjoy the land of the latter and includes an intermediary, a Kanamdar, a Kuzhikanamdar and a verumpattamdar of any description.

Intermediary is defined in Clause (j) of the same section as any person who not being a jenmi, has an interest in land, and is entitled, by

reason of such interest, to possession thereof, but has transferred such possession to others.

9. Mr. Bashyam contends on this point that the expression ""transferred such possession to others"" can only mean "transferred such kind of possession to others which he himself had in it", and therefore it is not necessary in order to get the benefits of the Act, that the person who had an interest in the land and entitled by reason of such interest to possession thereof to part with the possession of all the land that was in his possession.

10. For the other side, the learned Advocate General urges that the expression ""has transferred such possession"" cannot apply to the case where the mortgagee with possession has transferred possession of only a part of the property usufructually mortgaged to him. In support of these

arguments he relies upon three decisions of this Court. They are Patinhatte Patillath Karnavan and Manager Krishnan Namboodiri Vs. Narayanan

Namboodiri, , and an unreported decision of a single Judge of this Court in C. M. A. No. 367 of 1944, and a connected "C. M. S. A. No. 207 of

1944". In Patinhatte Patillath Karnavan and Manager Krishnan Namboodiri Vs. Narayanan Namboodiri, , Wadsworth and Patanjali Sastri JJ.

held that the words ""is in possession of the property mortgaged"" in Section 10 (2) of the Madras Agriculturists Relief Act can only mean is in

possession of the entire extent of the property mortgaged and even if a very small portion of the property mortgaged was not delivered to the

mortgagee it was not a usufructuary mortgage which would attract the provisions of Section 10 (2) of the Act and therefore the mortgagor was

entitled to the benefits of the Madras Agriculturists Relief Act.

11. In the unreported decision in "C. M. A, No. 367 of 1944" Kuppuswami Aiyar J. held that an assignor of a portion of the Kanam property was

not entitled to a renewal of the Kanam. On the analogy of these decisions, the Advocate-General maintains that unless the usufructuary mortgagee

has parted with the possession of the entire property he will not be an intermediary within the meaning of Clause (j) of Section 3 of the Malabar

Tenancy Act. The principle underlying these decisions renders this interpretation more acceptable. Further an analysis of provisions of Clause (j)

leads me to the conclusion that unless the mortgagee parts with possession of the entire extent of land he would not come within the purview of that

clause.

12. A person is an intermediary within the meaning of Clause (j) who not being a jenrni has an interest in the land and is entitled to possession of

such land by virtue of his interest but transferred such possession to others. That it covers the case of an usufructuary mortgagee does not admit of

any doubt. But when does he become an intermediary as defined in that clause? In other words what is the connotation of the words "such

possession"? They can only mean the possession of the land which he himself is entitled to. Since he is entitled to the possession of all the land

mortgaged to him, the expression can have reference only to the entirety of the land to the possession of which the mortgagee is entitled by virtue

of the interest which he has in the land.

13. If the legislature intended to apply this to a case of transfer of a portion of interest which the mortgagee has in the lands mortgaged to him it

would have certainly made specific provision for that purpose as is done in some of the sections of the same Act. In this connection the learned

Advocate General drew my attention to the definition of holding in clause (h) in Malabar Tenancy Act which specifically provides for a portion of

the holding and also to Sections 14, 20 and 33, which contain a reference to portions of a holding, and argues that as in those cases specific

provision for transfer of a portion or part of such property mortgaged would have been made if it was meant to include within the ambit of the

clause mortgagees who have parted with a portion of the mortgaged property. It is manifest from this sub-clause and from reference to the scheme

of the Act that it applies only to a case where the mortgagee, has parted with possession of the entire extent of land mortgaged to him and does not

cover a case where only a portion of the property mortgaged to him was transferred. If I accept the contentions sought to be placed by Mr.

Bashyam on Clause (j) of Section 3 it will lead to the frustration of the very object of the enactment. The usufructuary mortgagee by transferring a

small fraction of the property mortgaged to him may claim the benefit of the provision of this Act which does not seem to have been intended to be

conferred upon such persons. No doubt a Court has to give effect to the provision of enactments irrespective of a consideration of the hardship

involved to the persons affected thereby but a Court will not be justified in

enabling persons to circumvent the provisions of the Act and get undeserved benefit by placing strained construction. I do not think I will be placing reasonable interpretation on the words ""who has transferred such possession to others"" if I should hold that it includes a usufructuary mortgagee who has parted with a portion of the property mortgaged to him.

14. I, therefore, should hold that the conclusion of the Courts below that the judgment-debtor" is riot entitled to any relief under the provisions of Act 24 of 1949 as amended by Act 8 of 1950, is correct and ought to be affirmed. In this view of the matter it is not necessary for me to go into other contentions raised on behalf of the respondents or the appellants.

15. The Civil Miscellaneous Second Appeal fails and is dismissed with costs. No leave.