(1914) 08 MAD CK 0049

In the Madras High Court

Panambatta Kalathil Kunchu Menon	APPELLANT
Vs	
Kalathinpadikil Narayanan Ezhutessan	RESPONDENT

Date of Decision : 11-08-1914

Acts Referred:
Transfer of Property Act, 1882 — Section 76(c)

Citation : AIR 1915 Mad 100 : 25 Ind. Cas. 641

Hon'ble Judges : Oldfield, J

Bench : Single Bench

Judgement

Oldfield, J.—I do not deal with the lower Court''s finding on issue.(2) that the plaintiff had an interest entitling him to pay the amount sued for on the defendant''s behalf, because my conclusion on issue (1) that the defendant was not bound to make the payment, will be sufficient for the disposal of the petition.

2. The defendant is a mortgagee in possession and the question is whether he is bound as such " to pay the amount by which the assessment on the land mortgaged was enhanced after the date of the mortgage. u/s 76 (c) of the Transfer of Property Act the mortgagee in possession is bound to pay the revenue in the absence of a contract to the contrary. The following words in the mortgage, Exhibit II, are relied on, as constituting such a contract as regards at least revenue in excess of that specified in them:

Out of this 60 paras 15 nazhis of paddy is allowed for payment of revenue of 60 fanams 4 visams due on these, you having consented and undertaken to pay same from 1058 (1883) and obtain receipt therefor.

3. This is followed by an appropriation of the balance of the total produce, estimated at a specified quantity to interest at a specified rate. I do not think this can be treated as a general provision for the payment of revenue, whatever its amount. If it were one, the reference to the quantity of paddy appropriated for revenue would be superfluous. Nor can it, in my opinion, be read as requiring a payment of the revenue whatever its amount up to the value of the paddy so

appropriated; that is negatived by the specification of the amount of revenue payable. The natural sense of the words is that the total estimated income being assigned, to the mortgagee, it is appropriated in order that he may be guaranteed interest at not less than the rate fixed and may pay a specified amount of revenue that was then payable, and it is not to be supposed that the parties contemplated a deviation from the assumption involved in the latter provision which would have frustrated the purpose of the former. I, therefore, hold that the mortgage contains a contract to the contrary such as is referred to in Section 76(c)

4. Of the cases relied on by the plaintiff, in Kolli Valappil v. Natuwath Pappu 14 Ind. Cas. 590 the terms of the mortgage are not given, but the judgments state that it contained no contract to the contrary; and in Tuppan Nambudri v. Chinna Part Kutti 18 M.L.S. 31 there was no apportionment of the produce in any specific way to interest and revenue. On, the other hand in Panigaton Kanaran v. Raman Nair 17 M.L.J. 517 there was an appropriation of an estimated lump amount of produce on those accounts and the decision was in the defendant''s favour. No such general '' rule as the lower Court relies on can be deduced from the authorities. The only question is whether the particular mortgage; under consideration contains a contract to the contrary: and I hold that Exhibit II in this case contains one.

5. The defendant is, therefore, not bound to pay the addition to the assessment due to enhancement. It is conceded that if he is not, the plaintiff''s suit must fail.

6. The lower Court''s decision is set aside and the suit dismissed with costs in both Courts.

