

(1955) 02 MAD CK 0018

In the Madras High Court

Case No : Appeals Against Orders No's. 735 of 1951 and 66 of 1952 and Civil Revision Petition No. 2286 of 1951

Peria Karuppan Chettiar, deceased and Others

APPELLANT

Vs

K.O.K. Vaithyanathan Chettiar and Others

RESPONDENT

Date of Decision : 14-02-1955

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 19A, 19A(1), 19A(4), 19A(9)(2), 9
Transfer of Property Act, 1882 — Section 63(A)(2)

Citation : (1956) ILR (Mad) 27

Hon'ble Judges : Mack, J; Krishnaswami Nayudu, J

Bench : Division Bench

Advocate : D. Ramaswami Ayyangar and P.R. Varadarajan, for the Appellant; R. Gopalaswami Ayyangar and R. Ekambaram, for the Respondent

Judgement

Krishnaswami Nayudu, J.—These Appeals and Revision Petition arise out of an order passed under Sections 9-A and 19-A of the Madras Agriculturists Relief Act (IV of 1938). The Appellants in Civil Miscellaneous Appeal No. 66 of 1952, are the representatives of the mortgagee and the Respondents are the representatives of the mortgagors, under an othi deed, dated 22nd February 1906, for Rs. 50,000. The Respondents filed Original Petition No. 81 of 1949, on the file of the District Court of West Tanjore, under Sections 9-A and 19-A for scaling down the mortgage debt, their contention being that u/s 9-A, the mortgage debt had become completely discharged. There is no dispute that the Respondents are agriculturists, or that the transaction has not been taken out of the scope of Section 9-A by reason of any of its exceptions.

2. The main contention urged before the lower Court and reiterated here is that a petition u/s 19-A is not available to the mortgagors, who claim to have a declaration of the discharge of mortgage debt by the application of Section 9-A of the Act, their remedy being only by a suit for redemption. The learned District Judge rejected this contention and held that it was open to the mortgagors to apply u/s 19-A for having a declaration that the mortgage debt had become

discharged u/s 9-A of the Act. The other question that the learned District Judge had gone into is about the value of the improvements, which the mortgagee would be entitled to. Section 19-A has been introduced by the Madras Agriculturists Relief (Amendment) Act (XV of 1943). Prior to the enactment of Section 19-A, it is only a decree debt that was capable of being scaled down under the Act. Section 19-A provides only an additional remedy, a cheaper and simple method of obtaining declarations as to amounts due in respect of debts, which is to the advantage of both the creditor and the debtor, since upon such a declaration as to the exact amount due, the parties would generally be well advised not to take further proceedings, but pay or receive the amounts so declared. It is no bar to a suit being filed and since the Agriculturists Relief Act has been enacted to give relief to agriculturists, the obvious intention of the Legislature is to provide a less costly method of ascertaining the rights and liabilities of parties. Section 19-A extended the remedy by way of application to non-decree debts so as to enable the creditor or debtor to have a declaration from Court as to the proper amount due by an agriculturist. Section 19-A(1) provides that,

Where any debt incurred before the 22nd March 1938, other than a decree debt, is due by any person who claims that he was an agriculturist both on that date and on the 1st October 1937, the debtor or the creditor may apply to the Court having jurisdiction for a declaration of the amount of the debt due by the debtor on the date of the application....

3. By Clause (2):

The provisions of Sub-section (1) shall apply also to any person claiming to be such an agriculturist, who contends that any such debt due by him has been discharged.

4. Sub-section (4)(a) provides that:

Where any such application is made, the Court shall decide whether the debtor was such an agriculturist or not, and if it finds that he was such an agriculturist, pass an order declaring the amount due by him or declaring that the debt has been discharged, as the case may be.

5. Sub-section (9)(2) provides:

No Court shall entertain a suit by the creditor for the recovery of a debt:

(ii) if a Court having jurisdiction has passed an order under Clause (a) of Sub-section (4) in respect of such debt.

6. On a plain reading of the provisions of Section 19-A, a mortgage debt is not as such excluded from the operation of Section 19-A. It is common ground that in the othi deed there is a personal covenant to pay and there can be no doubt, therefore, that the mortgage in question comes within the definition of the word "debt" in the Act, and as such Section 19-A will be in terms applicable to a

mortgage debt dealt with u/s 9-A, unless there is anything in the language of Section 19-A or Section 9-A or in the Act excluding the application of Section 19-A to scaling down of debts covered by Section 9-A of the Act.

7. Mr. Gopalaswami Ayyangar, learned Counsel for the Appellants, contends that the declaration of discharge, which a mortgagor of a mortgage debt to which Section 9-A is applicable can obtain, is only in a proceeding contemplated u/s 9-A and that such a proceeding could be only by way of a suit for redemption and not by means of an application under the Act, that Section 9-A is a self-contained section and that the right and the remedy of a mortgagor has to be taken from the provisions of Section 9-A alone and that, therefore, an application u/s 19-A is not maintainable. It therefore becomes necessary to examine the provisions of Section 9-A to ascertain whether the remedy provided to an agriculturist in general for scaling down of a debt u/s 19-A could be said to be excluded by the language of Section 9-A. Section 9-A(1) says:

This section applies to all mortgages executed at any time before the 30th September 1947, and by virtue of which the mortgagee is in possession of the property mortgaged to him or any portion thereof--

(a) where no rate of interest is stipulated for as due to the mortgagee, or

(b) where a rate of interest is stipulated for as due to the mortgagee in respect of the principal amount secured by the mortgagee or any portion thereof, in addition to the usufruct from the property, or in respect of any other sum payable to the mortgagee by the mortgagor in his capacity as such.

8. In so far as the present mortgagee is concerned, it is a case coming within Section 9-A(1)(a), where there is no rate of interest stipulated to the mortgagee. It is virtually a usufructuary mortgage where the income from the property is to be appropriated in lieu of interest. The mortgage being of 1906, more than thirty years had elapsed, and since the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of thirty years and more, the mortgage debt must be deemed to have been wholly discharged under Sub-section (5) of Section 9-A with effect from the commencement of the Madras Agriculturists Relief (Amendment) Act of 1948, but subject to the condition under Sub-clause (iii) that no other sums or interest thereon are due to the mortgagee by the mortgagor in his capacity as such. The mortgagors therefore claim to be entitled to a declaration that the mortgagee having been in possession for admittedly more than thirty years, the mortgage has become discharged as and from the date of the commencement of the Amending Act of 1948.

9. The argument against the maintainability of an application is based on the language of some of the provisions of Section 9-A. Sub-section 2 of Section 9-A provides that;

The mortgagor shall be entitled to redeem the whole of the property mortgaged,

notwithstanding that the time, if any, fixed in the mortgage deed for redeeming the mortgage has not arrived.

10. Under Sub-section 3, if the mortgagee has been in possession of the whole of the property mortgaged to him for an aggregate period of less than thirty years, the mortgagor is held not entitled to redeem the mortgage. These are similar provisions as regards the rights of the mortgagor to redeem a portion of the property mortgaged, or redeem a property before the expiry of thirty years. It is therefore urged that the proper remedy is the remedy of a mortgagor provided under the Transfer of Property Act, viz., a suit for redemption and therefore even u/s 9-A it is by a suit for redemption and it is only such a suit that is contemplated by Section 9-A and not any other method of obtaining a declaration. Sub-section 8 provides that the mortgagor shall not be entitled to obtain possession of the mortgaged property by virtue of Sub-section 5(a), unless he pays to the mortgagee the cost of the improvements effected by him to the mortgaged property.

11. Relying on the reference to the right of the mortgagor to redeem, it is urged that Section 9-A is self-contained. It not only declares the right, but also provides the method or the remedy by which that right could be enforced. There is, however, nothing in the language of Section 9-A excluding the possibility of the application of any other provision of the Act, unless the application of such a provision could be inconsistent with the right conferred on a mortgagor u/s 9-A. The language of Section 9-A does not provide that the right could be agitated only in a suit for redemption and not otherwise, so long as mortgage debt is not outside the scope of Section 19-A. Again, there is nothing in Section 19-A, which could be said to bar an application by a mortgagor, who is entitled to rights of scaling down u/s 9-A to obtain a declaration of discharge of the mortgage. Such a declaration would certainly not entitle him to recover possession of the property, since Sub-section 8 of Section 9-A provides that unless he pays to the mortgagee the cost of the improvements, he cannot obtain possession. Even apart, the order which a Court could pass u/s 19-A, Sub-section 4(a), is only an order declaring that the debt is discharged, in this case, the mortgage debt. Any further remedy which the mortgagor might claim to have, as and by way of recovery of possession or otherwise, could be had not in a proceeding u/s 19-A, but by the other modes open to him under law, ordinarily by way of a suit.

12. A creditor applying u/s 19-A for a declaration as to the amount due under the provisions of the Act can have only an order for declaration, and if he desires to have a decree, he has to pay the necessary court-fee. Further, it may be noted that Section 19-A is a general provision under chapter IV relating to procedure, whereas Section 9-A is included in chapter II, relating to the scaling down of debts and future rate of interest. Chapter II deals with the rights granted to agriculturists, while chapter IV relates to the procedure under which the rights could be enforced in the manner in which the Act provides. There is therefore nothing to show that Section 9-A is an overriding provision and otherwise self-

contained, having no relation whatever with the procedure laid in the Act for enforcing the rights of the agriculturists. We are, therefore, of the opinion that the learned District Judge has taken the correct view in holding that a petition u/s 19-A is maintainable for declaring the mortgage discharged.

13. Civil Miscellaneous Appeal No. 735 and Civil Revision Petition No. 2286 of 1951, are filed by the mortgagors questioning the jurisdiction of the Court to inquire into the question of improvements, which are claimed by the mortgagee and the same contention, which is urged by the mortgagee, as to the non-maintainability of an application is urged by the mortgagors in so far as the question of improvements is concerned. The declaration of discharge, which a mortgagor is entitled to in a case of a mortgage coming within the scope of Section 9-A could be had under Sub-section 5(a), only if no other sums or interest thereon are due by the mortgagor to the mortgagee in his capacity as such. A usufructuary mortgagee is entitled to the value of improvements u/s 63(A)(2) of the Transfer of Property Act and the value of the improvement would necessarily be a sum due to the mortgagee in his capacity as such. Without ascertainment, therefore, of the value of the improvements, no declaration of discharge could be made, even though the mortgagee had been in possession for an aggregate period of thirty years or more. We have, therefore, no hesitation in observing that it was quite competent for the Court on an application by a mortgagor to have a declaration of the discharge of a mortgage to inquire into the value of the improvements, which the mortgagee would be entitled to under the law and the inquiry, and the fixing of the value of the improvements are perfectly within the jurisdiction of the Court.

14. Then as regards the amount declared to be due to the mortgagee as and for improvements, a sum of Rs. 15,000 was claimed as the estimated value of the improvements. A Commissioner was appointed and he examined the accounts of the mortgagee, which he observed, were kept in the usual course of business. He was satisfied with the expenditure shown in the accounts relating to the maintenance of tanks costing about Rs. 2,995. Claims were also made as regards the amount spent in repairing an old viduthi or rest-house and expenses incurred for putting up a new structure for an office and agents' quarters in respect of both of which the Commissioner allowed only a sum of Rs. 1,700. In addition, he allowed a sum of Rs. 890 and odd as expenditure incurred by the mortgagee for re-thatching of the viduthi and out-houses and repairs to well, compound wall, etc., and altogether a sum of Rs. 5,587 was allowed as the value of the improvements. The learned District Judge, in considering the report of the Commissioner, has effected a reduction in the amount, which the mortgagee would be entitled. The learned Judge deducted a sum of Rs. 1,179, and held that the proper value of the improvements would be only Rs. 4,410. The learned Judge took the view that the mortgagee is not entitled to the amount of expenditure incurred on the construction of a new office building and accepted the contention of the mortgagors that the improvement was totally uncalled for and not necessary for the proper enjoyment of the property.

15. Mr. Gopalaswami Ayyangar sought to argue that whatever improvements which are found to have been made by the mortgagee must be paid for by the mortgagor, if he applies u/s 9-A, since Sub-section 8 of Section 9-A mentions that the mortgagor has to pay the mortgagee the cost of the improvements, and not such improvements as he would be entitled as mortgagee under the Transfer of Property Act. The argument ignores Sub-section (5)(a)(iii), under which the mortgage debt shall be deemed to have been wholly discharged, where the mortgagee had been in possession of the whole of the property mortgaged to him, for an aggregate period of thirty years or more, if no other sums or interest thereon are due to the mortgagee by the mortgagor in his capacity as such. The "sums" due to the mortgagee in his capacity as such obviously refer to the sums expended on improvements, which the mortgagee can claim, because except under contract, no sums except probably any sums paid by the mortgagee as and towards public revenues, other than those incurred by him as and by way of improvements can be claimed by a mortgagee in possession, who becomes entitled to their value u/s 63(A)(2) of the Transfer of Property Act. The improvements referred to in Section 9-A are not any improvements effected while the mortgagee has been in possession but only such improvements to the value of which a mortgagee in possession could claim to be entitled to u/s 63-A(2) of the Transfer of Property Act. That is the view I expressed in *Dandayuthapani Devasthanam v. Md. Gani* (1953) 2 M.L.J. 454, 457 where I observed that,

The improvements referred to in Section 9 can only be improvements to mortgaged property as are contemplated u/s 63-A(2) of the Transfer of Property Act, i.e., in cases where improvement becomes necessary to preserve the property from destruction or deterioration or to prevent the security from destruction or deterioration or to prevent the security from becoming insufficient or was made in compliance with the lawful order of any public servant or public authority.

16. It is urged that the construction of a new office building for the quarters of the agents and to house the office is not necessary either to preserve the property from destruction or deterioration or to prevent the security from becoming insufficient. Prima facie this contention appears to be sound, but if we examine the particular facts of the present case, it would appear that such an improvement, as has been made in the present case of putting up a new building, would be necessary for proper conservation of the land, i.e., to prevent the security from becoming insufficient or to preserve the property from destruction or deterioration. The extent of the property, which is the subject-matter, is nearly two thousand acres of dry land consisting of eleven tanks and the management of such a large estate would require the assistance of agents and persons who should be expected to be on the spot and quarters for such agents and office for them could not be considered to be beyond the scope of the purposes enumerated u/s 63-A(2) of the Transfer of Property Act. Further, the mortgage deed provides that the mortgagees should keep correct and proper

accounts of the expenditure incurred and apart from their general obligation as usufructuary mortgagees to maintain accounts, a specific duty is provided under the contract for the maintenance of accounts and the supervision of the lands for which agents and clerks would be necessary. We consider, therefore, that the amount that was allowed by the Commissioner as and for the additional construction should not have been disallowed as not amounting to an improvement.

17. The result is that we accept the Commissioner's estimate of the improvements at Rs. 5,587-0-2 and hold that there will be a declaration that the othi debt has been completely discharged and the mortgagors are liable to pay the improvements assessed as stated above. There appears to be little practical purpose served by the direction of the learned Judge, even on the view he took, permitting the Appellants to dismantle this structure and take away the materials. This clause in the decree of the lower Court to dismantle the structure will, however, now be deleted. Subject to the above modification, the appeals and the Civil Revision Petition are dismissed. In the circumstances of the case, the parties will bear their respective costs.