

(1973) 04 MAD CK 0016

In the Madras High Court

Case No : Second Appeal No. 961 of 1971

Periyammal and Others

APPELLANT

Vs

Rukmani Ammal and Others

RESPONDENT

Date of Decision : 12-04-1973

Acts Referred:

Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 — Section 29(1)
Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 — Section 3

Citation : AIR 1974 Mad 170 : (1973) 86 LW 652

Hon'ble Judges : Raghavan, J

Bench : Single Bench

Judgement

Raghavan, J.—The defendants are the appellants. The suit is for redemption. The suit hypotheca belonged to one Srinivasa Iyengar, the

husband of the first plaintiff and the father of the second plaintiff, who borrowed a sum of Rupees 1,000 under a usufructuary mortgage dated 9-5-

1947 executed in favour of the first defendant and his wife, Kaliammal, the mother of defendants 2 and 3. The time for redemption was three

years. Kaliammal died about 1963, and defendants 2 and 3 are her heirs. The fourth defendant claimed to be in possession of the mortgaged

property under defendants 2 and 3. Plaintiffs 1 and 2 sold the properties to plaintiffs 3 to 7 under a registered sale deed dated 21-1-1966 and

plaintiffs 3 to 7 are entitled to redemption. Plaintiffs 1 and 2 have been joined to avoid any technical objection. According to the plaintiffs the

amount due under the mortgage is only Rs. 375 as per the provisions of Section 9-A of Madras Act IV of 1938. The suit is laid for the redemption

of the mortgage and for recovery of possession.

2. The defence to the suit was that the suit hypotheca is not the absolute property of plaintiffs 1 and 2, that it is a devadayam inam granted for chanting Sahasranamam in the temple of Sri Prasanna Venkataramanaswami at Kangayam, that Srinivasa Iyengar, the husband of the first plaintiff and they father of the second plaintiff was only an oozhiadar, having no proprietary rights or interest in the inam lands, that Srinivasa Iyengar died on 20-1-1950 and that plaintiffs 1 and 2 had no right of enjoyment or title to the property as there was a total discontinuance of the services after Srinivasa Iyengar's death. The further contention of the defendants is that the plaintiffs 1 and 2 have no locus standi to maintain the suit for recovery of possession, that the rights of Srinivasa Iyengar were lost by discontinuance of services for a long number of years, that the plaintiffs had forfeited all rights to such office and could not claim to redeem the mortgage and that the sale to plaintiffs 3 to 7 is void and illegal. Their further contention is that minor inams have been abolished under the provisions of the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, XXX of 1963, that pursuant to the notification dated 15-2-1965, the properties have vested in the Government, that the rights of the parties have been extinguished and that the suit is not competent. The rights of the parties are governed by the provisions of the said Act, the parties have to work out their rights under that Act and the present suit is not maintainable.

3. The trial court decreed the suit for redemption. While doing so, it held that plaintiffs 1 and 2 had title to the suit property, that the defendants being mortgagees could not question the title of plaintiffs 1 and 2, that plaintiffs 1 and 2 had a right to redeem the mortgage and that the suit for redemption is maintainable. The trial court further held, on the question of the correct amount due under the suit mortgage, that the plaintiffs not being agriculturists, are not entitled to the benefits of the Act and that the entire amount due under the mortgage is payable before redemption. In the result the trial court gave a decree for redemption in favour of the first plaintiff alone on payment of a sum of Rs. 1,000 and for recovery of possession of the hypotheca from the defendants, in view of the fact that the alienation in favour of plaintiffs 3 to 7 is invalid.

4. The defendants filed A. S. 2 of 1968 and the plaintiffs filed Ap. No. 125 of 1969 against the judgment of the trial court. Both the appeals were

heard together, and the learned Additional Subordinate Judge dismissed both the appeals confirming the conclusions of the trial court on all the

points. The defendants have filed this second appeals.

5. The suit property was admittedly a minor inam covered by the provisions of the Madras Minor Inams (Abolition and Conversion into Ryotwari)

Act, XXX of 1963. Section 3 is the vesting section, under which with effect on and from the appointed day every minor inam shall stand

transferred to the Government and vest in them free of all encumbrances. Clause (c) provides that all rights and interests created by the inamdar in

or over his inam before the appointed day shall, as against the Government, cease and determine, Clause (e) provided that the inamdar and any

other person whose rights stand transferred under clause (b) or cease and determine under clause (e) shall be entitled only to such rights and

privileges as are recognised or conferred on him by or under the Act. Clause (f) provides that the rights and obligations of the Inamdar as such

shall be extinguished. The position therefore is that on the notified date the rights of the parties are crystallised and thereafter they have to be

worked out only under the provisions of the Act.

6. The next relevant provision is Section 8 which provides for the grant of ryotwari pattas. u/s 8 (1) every person who is lawfully entitled to the

kudiwaram in an inam land immediately before the appointed day shall be entitled to ryotwari patta in respect of the land. Sub-section (2) deals

with the properties granted as minor inam for the support or maintenance of a religious institution or for the performance of a charity or service

connected therewith or of any other religious charity. Clause (i) of Section 8 (1) deals with the rights of transferees of the lands by way of sale,

Clause (ii) of Section 8 (1) deals with the rights of the institution or individual rendering service; that is to say, that such individual rendering service

with effect on and from the appointed day will be entitled to ryotwari patta in respect of the land. Sub-section (5) of Section provides that, in the

case of a minor inam held immediately before the appointed day by an individual on condition of rendering service to a religious, educational or

charitable institution, the grant of ryotwari patta under sub-section (1) or (2), shall be subject to the provisions of Section 21.

7. Section 9 deals with the grant of ryotwari patta in cases not covered by

Section 8.

8. The next relevant provision is Section 20, which provides for the payment of tasdik allowance to religious, educational or charitable institution,

where the inamdar of an iruvaram minor inam is a religious, education or charitable institution or an individual holding the inam on condition of

rendering service to a religious, educational or charitable institution, and the rate at which the Government shall pay to the institution every fasli year

commencing from the fasli year in which the appointed day falls as tasdik allowance which shall be calculated in terms of Section Section.

9. Section 21 deals with the service inams and it applies in respect of any minor inam which was held immediately before the appointed day by an

individual, namely, the service-holder on condition of his rendering service to a religious, educational or charitable institution. Sub-section (2)

provides that the service-holder shall, subject to the provisions of sub-section (3) continue to render service after the appointed day. Sub-section

(3) deals with a situation where the service-holder, who is entitled to a ryotwari patta u/s 8, shall have the following options, viz., (i) either to pay to

the religious institution the amount specified in sub-section (4) and on such payment the land shall be discharged from the condition of the service,

or (ii) to hold the land and continue to render service subject to the provisions contained in sub-sections (1)(2)(6) and (7). Sub-section (5)

provides that, where the service-holder has exercised his option to pay the amount specified in sub-section (4) the tasdik allowance referred to in

sub-section (6) in respect of the period subsequent to the date of the exercise of such option shall be the absolute property of the institution and the

institution shall be at liberty to make such arrangements as it thinks fit for the performance of the service, Clause (a) of sub-section (6) provides

that the institution shall pay to the service-holder the tasdik allowance paid by the Government u/s 20 so long as he renders service, and under

clause (b), if the service-holder fails to render service, after due enquiry, notify such failure and then declare that the tasdik allowance payable to

the institution in respect of the period subsequent to the failure shall be the absolute property of the institution, and the institution shall be at liberty

to make such arrangement as it thinks fit for the performance of the service. Sub-section (7) provides for the service-holder being entitled to

occupy permanently the land in respect of which he is entitled to a patta u/s 8, subject to the payment of the assessment fixed in respect of such

lands. In case the service-holder fails to render service, the prescribed officer shall declare that the service-holder's right to occupy the land under

clause (a) shall cease and determine and the institution shall be at liberty to make such arrangements as it thinks fit for the performance of the

service and shall hold the land as its absolute property subject to the payment of the assessment fixed therefore.

10. I have referred to these provisions in detail only for the purpose of showing that plaintiffs will have to work out their rights only under the

provisions of the Act, and that they cannot seek to enforce their right to redeem the mortgage which has ceased to be operative on the date of the

notification. The mortgagee will be entitled to proceed against the compensation amount in deposit for the recovery of the amount due under the

mortgage. The plaintiffs, however, will not be entitled to claim redemption of the mortgage and their rights lie elsewhere which they have to work

out.

11. Mr. M. S. Venkatarama Iyer, the learned counsel for the respondents, drew my attention to some of the provisions of the Hindu Religious and

Charitable Endowments Act, 1959, in particular, to Section 29 (1)(e), under which, for every religious institution there shall be prepared and

maintained a register in such form as the Commissioner may direct showing particulars of all other endowments of the institution and of all the title

deeds and other documents. Therefore, in respect of this institution the name of the service-holder would be entered in the register in accordance

with the record prepared u/s 29 of the Hindu Religious and Charitable Endowments Act and the service which the service-holder is bound to

render, namely, recital of Sahasranamam for the institution. Considering this provision along with the provisions of the Minor Inams Act, the

position is that the service-holder's right would depend upon the question whether or not he was rendering service to the institution on the notified

day.

12. The courts below have missed this significant aspect of the matter and have proceeded on the basis that the suit is for redemption of a

mortgage simpliciter. The learned counsel for the appellants drew my attention to

Exs. B-10 and B-11 which are particulars relating to the service rendered by the service-holders in Sri Prasanna Venkataramanasami temple, Kangayam, maintained by the authorities. The particulars therein show that the entry relating to performance of Sahasranamam service is vacant that is to say that no Sahasranamam is being chanted. On this the learned counsel comments that the service, if performed through proxy, may not be entered in the register and that, that entry will not establish that the service is not performed at all. This is a matter which has to be examined in appropriate proceedings, but this is not the forum for determining that question.

13. The second appeal is therefore allowed. There will be no order as to costs. No leave.

14. Appeal allowed.