

(1984) 11 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 1477 of 1982

Pitchai Mudaliar and P. Veerappan

APPELLANT

Vs

The Tahsildar (Debt Relief) Musiri, Trichy District, Revenue
Divisional Officer, Musiri, Trichy District and C. Arumugam

RESPONDENT

Date of Decision : 21-11-1984

Acts Referred:

Citation : (1984) 11 MAD CK 0049

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Advocate : K. Doraisami, P. Sathasivam and R. Balasubramaniam, for the Appellant; C. Chinnasami, Addl. Govt. Pleader for Respts 1 to 2 and Mr. R. Ponnuswami for Respt 3, for the Respondent

Judgement

G. Ramanujam, J.—The petitioners herein are the creditors who had advanced a loan to the third respondent herein on a mortgage. The third respondent herein filed an application to the 1st respondent claiming that he is entitled to the benefits of Act 13 of 1980 and applied for the certificate of redemption of the said mortgage. The case of the third respondent was that he owns immovable properties worth less than Rs. 25,000 and he is entitled to claim the benefit of Act 13 of 1980. The said application filed under S. 6 of the Act praying for a certificate of redemption was opposed by the petitioners-creditors on the ground that the third respondent owns properties worth more than Rs. 31,440. They also produced a certificate from the concerned competent authority (Tahsildar, Lalgudi) to the effect that the actual value of the property is Rs. 31,440. The second respondent allowed the said application and granted a certificate of redemption in favour of the third respondent holding that out of 4 properties referred to in the certificate issued by the competent authority (sic) for which the aggregate value is said to be Rs. 31,440 the (sic) third item, that is, door No. 28, in Ward No. 7, does not belong to the debtor, but it belongs to the mother of the debtors and that if the value of that house which is said to be Rs. 14,000 is excluded, then the value of the other three items of property will be considerably

less than Rs. 25,000 and therefore, the third respondent is entitled to claim the benefit of Act 13 of 1980. Aggrieved by the said order the petitioners filed an appeal before the Appellate Authority, the second respondent herein. Before the second respondent, a reference was made to the sale deeds relating to house No. 28, in Ward No. 7 to show that that item really belongs to the debtor and not to the mother of the debtor and, therefore, the second respondent is in error in excluding the sum of Rs. 14,000 said to be the value of house No. 28, in Ward No. 7. The Appellate Authority without going into the contention advanced on behalf of the petitioners proceeded to affirm the decision of the first respondent stating that the second respondent has passed the order after seeing the documents before him and therefore, it does not call for any interference. In that view the second respondent sustained the relief given to the third respondent by the first respondent. Aggrieved by the said order of the second respondent, affirming the order of the first respondent, the petitioners have come before this Court for the writ of certiorari to quash the said two orders. According to the petitioners all the four items of properties set down in the certificate issued by the competent authority belong to the debtor, the third respondent and therefore, the petitioners should be taken to own properties of the value of Rs. 31,440 and that the exclusion of door No. 28 in Ward No. 7, from the list of the properties owned by the third respondent both by the first and the second respondents is not legally tenable. They have not considered giving due weight to the documents of title produced by the petitioners. It is not in dispute that the competent authority, the Tahsildar, Lalgudi, has given a certificate as to the value of the properties owned by the third respondent. That certificate contains four items of properties--(i) One-fourth Share in 95 cents S. No. 347/7 valued at Rs. 1,440 (ii) A tiled House No. 3 in Ward No. 7 of Pullambadi Panchayat Union, valued at Rs. 10,000 (iii) A terraced house at No. 28, in Ward No. 7 in the same Panchayat Union valued at Rs. 14,000 (iv) A tiled house in S. No. 399/19 valued at Rs. 6,000. The genuineness of this certificate has not been questioned. Out of the four items referred to in the said certificate, the third respondent questioned the inclusion of item 3 alone. He did not dispute the ownership of other three items nor did he dispute the value of the other items. The case of the third respondent was door No. 28 in Ward No. 7 belonged to his mother and therefore, it should be excluded. This has been accepted by the first and the second respondents mainly on the ground that the house tax has been paid only in the name of the mother and the house also stands registered in her name in the Town Panchayat. Even at the initial stage, that is, when the matter was pending before the second respondent the petitioners produced the relevant sale deed to show that the property is owned by the petitioners and not by their mother and that neither the house tax receipts nor the name of the mother in the register will affect the ownership of the property which vests in the third respondent. These documents have not been considered either by the first or the second respondent and they have merely proceeded to hold that the property belonged to the mother on the basis of the tax receipts and on the basis that the property has been registered in the Municipal registers in the name of the mother. Even

when the attention of the first respondent was invited to the document of sale, dated 24th February, 1958 under which the third respondent has purchased a half share of his brother in the property in question in door No. 28 in Ward No. 7, the first respondent did not care to look into the document nor did he discuss about the question of ownership. It is not in dispute that the document was in fact filed before the second respondent and the same was strongly relied on by the petitioners to prove the title of the debtor to the house in No. 28, in Ward No. 7. Even a cursory perusal of the sale deed will show that the property in fact belonged to the third respondent and his brother and that the brother had sold his half share to the third respondent by that document. When there is a document of title showing that the ownership of property vests in a particular individual, it is not open to the first and the second respondents to rely on tax receipts as proof of title. It is well established that the tax receipts cannot be taken to be evidence of title though the same may be taken to be evidence of possession at times. In this view of the matter, since respondents 1 and 2 have not given due weight to the document of title produced by the petitioners, and they have merely proceeded to hold that the property belonged to the mother of the third respondent on the basis of the tax receipts alone, the conclusion cannot legally be sustained. If the door No. 28 in Ward No. 7 is taken to be the property of the third respondent, half of which he owns under the original purchase (sic) when it was acquired by the sale deed dated 24th February, 1958. The total value of the holding of the immovable properties of the third respondent should be taken to be Rs. 31,440 which is well in excess of Rs. 24,000 provided for under Act 13 of 1980 for getting the benefit under that Act. Hence, the third respondent cannot claim the benefit under Act 13 of 1980. In this view, the orders of both the first and the second respondent are quashed.

2. The writ petition is allowed. There will be no order as to costs.