

(2006) 03 SC CK 0041

In the Supreme Court Of India

Case No : Civil Appeal No. 840 of 2000

Prabhakaran and Others

APPELLANT

Vs

M. Azhagiri Pillai (Dead) by LRs. and Others

RESPONDENT

Date of Decision : 20-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 10, Order 34 Rule 7, Order 34 Rule 8, Order 34 Rule 8A, Order 34 Rule 9
Limitation Act, 1908 — Article 148, 19, 30
Limitation Act, 1963 — Article 61, 18, 27
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Citation : AIR 2006 SC 1567 : (2006) AIRSCW 1482 : (2006) 2 AWC 1899
Supp : (2006) 3 CHN 151 Supp : (2006) 2 CTC 412 : (2006) 5 JT 57 : (2006) 2
LW 922 : (2006) 2 MLJ 272 : (2006) 3 RLW 2324 : (2006) 3 SCALE 235 : (2006)
4 SCC 484 : (2006) 3 Supreme 245

Hon'ble Judges : R. V. Raveendran, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : P. Krishnamoorthy, R. Nedumaran and Rajiv Rufus, for the Appellant;
K. Ramamoorthy K.B. Sounder Rajan, N.L. Ganapathi, Sudershan Rajan and P.
Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—This appeal by special leave is filed by the legal representatives of the plaintiffs in a suit for redemption of mortgage.

2. Brief facts necessary for disposal of this appeal are:-

2.1) One Manickam Pillai obtained a loan of Rs. 300/- from Krishna Pillai and mortgaged his property situated in Prithivimangalam Village, Thyagadurgam Taluk, (for short 'the suit property') in favour of the said Krishna Pillai under a usufructuary mortgage deed dated 7.9.1935 (Ex.A-1). The deed provided that mortgagee is entitled to be in possession of the mortgaged property in lieu of interest till redemption.

2.2) The mortgagee (Krishna Pillai) assigned the said mortgage in favour of one Soundararaja Iyenger (also known as Soundararaja Achariar) under registered deed dated 12.2.1954 (Ex.A-3) by receiving Rs. 300/- from the assignee and delivered possession of the suit property to the assignee. The said assignee, Soundararaja Iyenger died leaving him surviving his widow Jayalakshmi Ammal and son Krishnaswamy Iyenger (defendants 1 and 2 in the suit).

2.3) The mortgagor Manickam Pillai died some years after executing the mortgage deed, survived by his widow and four daughters. His widow and first daughter Kuppammal died subsequently. The second daughter also died leaving behind her son Thukkaram. His third daughter Yasodai Ammal and Thukkaram settled their share/interest in the right of redemption in favour of the fourth daughter of Manickam Pillai, namely, Sakkubai Ammal (first plaintiff) under registered deed dated 24.8.1981. Before such gift/settlement, Thukkaram, Yasodai Ammal and Sakkubai Ammal issued a notice on 21.8.1977 for redemption of the mortgage. Defendants 1 and 2 sent a reply dated 26.8.1977 refusing to comply on the ground that they were not in possession of the suit property and one Azhagiri Pillai (third defendant in the suit) was in possession of the property. Thereafter, a notice dated 9.10.1977 was also sent to Azhagiri Pillai who sent a reply dated 26.10.1977 repudiating the claim and setting up an oral sale in his favour in December, 1953/January, 1954.

3. The said Sakkubai Ammal filed the said suit - O.S. No. 1079/81 on the file of the District Munsiff, Kallakurichi on 16.11.1981 for the following reliefs: (i) a preliminary decree for redemption of the usufructuary mortgage dated 7.9.1935 in regard to the suit property, (ii) for an account in respect of the income therefrom, from the date of discharge of the mortgage; and (iii) for a final decree for redemption of the mortgage. Plaintiffs contended that the mortgage and the right of redemption were subsisting, in view of the assignment dated 12.2.1954 being an 'acknowledgement' and that the mortgage debt stood discharged by Section 9 of the Tamil Nadu Debt Relief Act, 1979 (for short 'the Debt Relief Act'). In the said suit, Jayalakshmi Ammal and Krishnaswamy Iyenger (legal heirs of the assignee of the mortgage) were impleaded as defendants 1 and 2. Azhagiri Pillai who was in possession, either as a licensee or lessee of Soundararaja Iyenger, was impleaded as the third defendant. As the said defendant had let out the suit property to Raghmathulla Sahib and Mayava Pandithan, they were impleaded as defendants 4 and 5.

4. Defendants 1 and 2 as also defendants 4 and 5 remained ex parte. Only the third defendant, (Azhagiri Pillai) contested the suit, alleging that he was the cousin of first plaintiff; that apart from the mortgage dated 7.9.1935 created by Manickam Pillai, the suit property was mortgaged by the daughters of Manickam Pillai to one Raju Pillai on 22.6.1948 for Rs. 200/-; that they (first plaintiff and her sisters) approached him for discharging the said debts; that the property was valued at Rs. 1,000/-, and it was agreed that he should pay them Rs. 400/- and retain the balance of Rs. 600/- to discharge the two mortgage debts; that

accordingly he paid Rs. 400/- to first plaintiff and her sisters in December, 1953 or January, 1954 and purchased the suit property under an oral sale; that as he did not have the funds to pay the mortgage debts, his friend Soundararaja Iyenger came to his rescue with the understanding that he (Soundararaja Iyenger) would discharge the usufructuary mortgage in favour of Krishna Pillai and simple mortgage in favour of Raju Pillai and obtain assignments of the mortgages, and thereafter receive the amount from the third defendant as and when he was able to pay the amount; that in pursuance of such arrangement, Soundararaja Iyenger paid the mortgage amount to Krishna Pillai and Raju Pillai and obtained assignments dated 12.2.1954 in his favour; that subsequently in the year 1960, the third defendant paid the amount to Soundararaja Iyenger; and that he obtained possession of the suit property in the year 1954. He contended that he perfected his title by adverse possession. He also contended that the mortgage dated 7.9.1935 was no longer subsisting and the plaintiffs had no right of redemption.

5. During the pendency of the suit, the first plaintiff Sakkubai Ammal died. Her legal heirs, that is, husband Vijayarangam Pillai, sons Prabhakaran and Venkatesan, and daughter Vatchala were impleaded as plaintiff Nos. 3, 2, 5 and 4 respectively. After evidence, the trial court dismissed the suit by judgment and decree dated 30.10.1987 holding that the mortgage deed dated 7.9.1935 was not subsisting as on the date of the suit, that the right of redemption was barred by limitation, and the third defendant had perfected his title over the suit property by adverse possession.

6. Feeling aggrieved, plaintiffs 2 to 5 filed an appeal before the Subordinate Court, Virudachalam. The first appellate court allowed the said appeal by judgment and decree dated 18.12.1990. It held that the oral sale put forth by the third defendant was not proved and at all events void and invalid as any sale for a consideration of more than Rs. 100/- could be only by a registered instrument. It held that even if the third defendant was in possession for more than 12 years, such possession by the third defendant was claimed through the mortgagee, and did not become adverse to plaintiffs nor confer title on third defendant by adverse possession. The appellate court also held that having regard to the acknowledgement contained in the deed of assignment of the mortgage dated 12.2.1954 by Krishna Pillai, the mortgage was subsisting and the first plaintiff was entitled to file a suit for redemption within 30 years from 12.2.1954, and, therefore, the suit filed in the year 1981 was not barred by limitation. It also held that by virtue of the mortgagee and his assignee being in possession of the mortgaged property for more than 10 years, the mortgage debt was discharged u/s 9 of the Debt Relief Act. Consequently, the first appellate court allowed the appeal, set aside the judgment and decree of the trial court and granted a preliminary decree for redemption with costs, as prayed.

7. The third defendant filed Second Appeal No. 99/1991 before the Madras High Court against the said judgment. He also filed an application (CMP No. 5963 of

1997 in the second appeal) for amendment of the decree by amending the description of the suit property so as to be in conformity with the deed of mortgage dated 7.9.1935 (Ex. A1).

8. A learned Single Judge of the Madras High Court by judgment dated 1.9.1999, allowed the second appeal, and consequently, dismissed the suit, holding as follows:-

(i) The concurrent finding of fact recorded by the trial court and first appellate court that Azhagiri Pillai (third defendant), did not acquire title by adverse possession, did not call for interference.

(ii) The assignment of mortgage by the mortgagee under deed dated 12.2.1954 did not amount to acknowledgement for extending limitation for filing a suit for redemption.

(iii) The mortgage was executed on 7.9.1935. The period of limitation for a suit for redemption was 30 years under Article 61(a) of the Limitation Act, 1963, while the period of limitation was 60 years under the corresponding Article 148 of the Limitation Act, 1908. Where the period of limitation under the new Act was shorter, having regard to Section 30 of the new Act, the suit ought to have been filed within 7 years from the date of commencement of the said Act. The new Act came into force on 1.1.1964. Therefore, the last date for filing the suit for redemption was 1.1.1971 and the suit filed on 16.11.1981 was barred by limitation.

(iv) The plaintiffs were not entitled to any relief under the provisions of the Tamil Nadu Debt Relief Act, 1979, as the mortgage was not subsisting on 15.7.1978, when the said Act came into force.

(v) The plaintiffs could not alternatively claim relief under the Tamil Nadu Agriculturist Relief Act, 1938 (Act 4 of 1938) as amended by Act 24 of 1950, as such a case was not pleaded.

9. In this appeal filed by the plaintiffs, the contentions urged to challenge the decision of the High Court, give rise to the following questions for consideration:

(i) Whether the assignment of the usufructuary mortgage by Krishna Pillai in favour of Soundararaja Iyenger under deed dated 12.2.1954 amounted to an 'acknowledgement' u/s 18 of Limitation Act, 1963, thereby enabling plaintiffs to compute a fresh period of limitation for the suit for redemption, from the date of such acknowledgement.

(ii) Whether the mortgage debt under the deed of mortgage dated 7.9.1935 stood discharged u/s 9 of the Tamil Nadu Debt Relief Act, 1979.

(iii) If the answer to the above two questions is in the affirmative, to what relief plaintiffs are entitled to.

Re: Question (i):

10. An usufructuary mortgage is a transfer by the owner (mortgagor) of an interest in an immovable property for securing the amount advanced/to be advanced by the creditor (mortgagee), under which possession of the property is delivered to the mortgagee with authority to retain such possession and enjoy the rents and profits therefrom, until the debt is paid (vide Section 58(d) of the Transfer of Property Act, 1882, for short 'T.P. Act'). The owner/mortgagor, who continues to hold the bundle of rights constituting ownership, minus the right to possession, has the right to recover possession of the mortgaged property by paying the mortgage debt. The said right to recover possession (along with the right to receive back the documents relating to the mortgaged property and the right to obtain a deed of reconveyance/retransfer of the mortgaged property) is known as the right of redemption of the mortgagor and is statutorily recognized in Section 60 of T.P. Act. Such right of redemption can be extinguished during the subsistence of the mortgage only by the act of parties or by decree of a court. This Court in *Jayasingh Dnyanu Mhoprekar and Another Vs. Krishna Babaji Patil and Another*, observed:

It is well-settled that the right of redemption under a mortgage deed can come to an end only in a manner known to law. Such extinguishment of right can take place by a contract between the parties, by a merger or by a statutory provision which debars the mortgagor from redeeming the mortgage. A mortgagee who has entered into possession of the mortgaged property under a mortgage will have to give up possession of the property when the suit for redemption is filed unless he is able to show that the right of redemption has come to an end or that the suit is liable to be dismissed on some other valid ground. This flows from the legal principle which is applicable to all mortgages, namely, "Once a mortgage, always a mortgage".

11. Article 148 of the Limitation Act, 1908 (referred to as 'old Act') provided a limitation of 60 years for a suit against a mortgagee, to redeem or to recover possession of immovable property mortgaged. The corresponding provision in the Limitation Act, 1963 ('new Act' or 'Limitation Act' for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner.

12. Section 18 of the new Act (corresponding to Section 19 of the old Act) deals with the effect of acknowledgment in writing, the relevant portion whereof reads thus:

18. Effect of acknowledgment in writing.- (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.

(2) ...

Explanation.- For the purposes of this section,-

(a) an acknowledgement may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,....

13. Earlier, there were two views as to what constituted an acknowledgement in regard to a suit for redemption of a mortgage. One view was that an admission by a mortgagee, in a subsequent transaction, that he holds the property as a mortgagee was a sufficient acknowledgement that the mortgagee thought and believed that he was liable for the property being 'redeemed' from him by the mortgagor as on the date of that statement. The other view was that, to constitute an acknowledgement, the statement must be an admission by the mortgagee of the jural relationship in relation to the liability or the right or the property claimed and that such a statement must be shown to have been made with a consciousness and an intention of admitting such a right or liability. The controversy has now been set at rest by the decisions of this Court.

14. In *Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others*, , this Court explained the essentials of an acknowledgement by considering the scope of Section 19 of the old Act:

...acknowledgement as prescribed by Section 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgement of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication.

The statement on which a plea of acknowledgement is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgement must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such

intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear, then the intention to admit jural relationship may be implied from it.

In construing words used in the statements made in writing on which a plea of acknowledgement rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. - The effect of the words used in a particular document must inevitably depend upon the context in which the words are used and would always be conditioned by the tenor of the said document....

Stated generally, courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning.

15. The question was again examined with reference to the right of redemption in Tilak Ram and Others Vs. Nathu and Others, and this Court held:

The right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a statement setting out jural relationship is made clearly without intending to admit its existence, an intention to admit cannot be imposed on its maker by an involved or a far-fetched process of reasoning.

After examining the wording of the document which was put forth as an 'acknowledgement', in that case, this Court observed as follows, on the facts of that case:

These statements were clearly made for the purpose of describing his own rights which he was selling under this deed. But there is nothing in this document to show that he referred to the said mortgages with the intention of admitting his jural relationship with his mortgagors and, therefore, of his subsisting liability as the mortgagee thereunder of being redeemed.

The principles laid down in S.F. MAZDA (supra) and TILAK RAM (supra) were reiterated in Lakshmirattan Cotton Mills Co.Ltd. and Behari Lal Ram Charan Vs. The Aluminium Corporation of India Ltd., .

16. This Court had occasion to consider the question again in Reet Mohinder Singh Sekhon Vs. Mohinder Parkash and Others, . In that case, the suit property was mortgaged on 22.5.1886 and the mortgagee sold his mortgage rights under a Sale Deed dated 1.11.1913 which contained the following recitals:-

Now I of my own accord have sold all my mortgagee rights along with the

original mortgage consideration and interest which according to the terms of the aforesaid mortgage deed has accrued and is payable to the instant vendor.... The rights and interest regarding recovery of original mortgage money and interest according to mortgage deeds executed by Jangi Khan original mortgagor deceased and redemption of the mortgaged land which hence to for vested in the instant vendor stand vested in the purchaser....

The successors-in-interest of the mortgagor filed a suit for redemption on 28.12.1968 contending that the aforesaid recitals amounted to an acknowledgement of the right of the mortgagor to redeem the property. The suit was resisted on the ground that the recitals in the sale deed dated 1.11.1913 did not serve as an acknowledgement. Negating the said objection, this Court held:

...It is true, as pointed out in *Tilak Ram and Others Vs. Nathu and Others*, , that the period of limitation cannot be extended by a mere passing recital regarding the factum of the mortgage but that the statement on which the plea of an acknowledgement is based must relate to a subsisting liability. The words used must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting such jural relationship. But, in our opinion, the recitals in the sale deed on November 1, 1913 fulfil the above requirements. The fact of Nanak Chand having obtained a mortgage with possession had already been recited in an earlier part of the sale deed. The passages in the sale deed, which have been extracted by us above, contain two specific recitals. The first is that "the original consideration and interest under had accrued and was payable to the instant vendor". These words acknowledge that the mortgage had not been redeemed and that the mortgage moneys remained outstanding to the mortgagee from the mortgagor as on the date of the sale deed. The second recital is even more specific. It says that what stands transferred to the purchaser is not only the right of the mortgagee for recovering the principal amounts and interest according to the mortgage deed (which, as earlier stated, still remained outstanding) but also "the rights and interest" regarding the redemption of the mortgaged land. These words are, of course, a little inappropriate because the right of redemption is in the mortgagor and not in the mortgagee. But, read as a whole, the second sentence we have quoted here from the sale deed clearly manifests an intention on the part of the mortgagee to acknowledge that his right to recover the moneys under the mortgage deed as well as his liability to have the property redeemed by the mortgagor in the event of his paying off the moneys due under the instrument both stand vested in the purchaser. We are of the opinion that it is not correct to treat the recitals in the document as a mere narration of the previous mortgage that had been created on the property. The words spell out a clear intention that the moneys due under the mortgage still remained unpaid and also that the mortgagor had a subsisting right of redemption which he could enforce against the mortgagee. In this view of the matter the contention on behalf of the appellant that the recitals in the document of November 1, 1913 constituted an acknowledgement of liability for redemption within the meaning of Section 19 of

the Limitation Act deserves to be accepted.

17. The said principles relating to Section 19 of the old Act fully apply to 'acknowledgements' u/s 18 of the new Act. To summarise, a statement (in writing and signed) by a mortgagee can be construed as an 'acknowledgement' u/s 18 of the Limitation Act, if it fulfils the following requirements:

(i) The acknowledgement of liability must relate to a subsisting mortgage.

(ii) The acknowledgement need not be in a document addressed to the mortgagor (person entitled to the property or right). But it should be made by the mortgagee (the person under liability).

(iii) The words used in the acknowledgement must indicate the existence of jural relationship between the parties and it must appear that the statement is made by the mortgagee with the intention of admitting the jural relationship with the mortgagor.

(Such intention of admitting the jural relationship need not be in express terms, but can be inferred or implied from the nature of admission and the words used, though oral evidence as to the meaning and intent of such words is excluded.)

(iv) Where the statement by the mortgagee in the subsequent document (say, deed of assignment) merely refers to the mortgage in his favour which is being assigned, without the intention of admitting the jural relationship with the mortgagor, it will not be considered to be an 'acknowledgement'.

18. There is no difficulty in holding a statement to be an 'acknowledgement' u/s 18, where the mortgagee makes a direct admission that he is liable to deliver back possession to the mortgagor or that the mortgagor has the right to redeem the property from the mortgage. But when there is no direct admission, but an acknowledgement is to be implied from an admission of jural relationship, we have noticed some confusion in the decisions rendered, as to what is an "admission of jural relationship". The term 'jural' means 'legal' or 'pertaining to rights and obligations'. 'Jural relationship between parties' means legal relationship between parties with reference to their rights and obligations. In a mortgage, both the mortgagor and the mortgagee, have certain rights and obligations against each other. The rights/obligations of a mortgagor or a mortgagee co-exist, like the two sides of a coin. The mortgagor's right of redemption is co-extensive with the mortgagee's right of sale or foreclosure (where such right is recognized in law). Any statement by either, admitting the jural relationship with the other, will extend the limitation for a suit by that other, against the person acknowledging. It follows that when a mortgagee makes a statement about his right to recover the mortgage amount, such statement impliedly acknowledges the corresponding right of redemption of the mortgagor. Further, a statement admitting jural relationship, need not refer to or reiterate the rights and obligations flowing therefrom. Where a party to the mortgage, by his statement, admits the existence of the mortgage or his rights under the

mortgage, he admits all legal incidents of the mortgage including rights and obligations of both parties, that is mortgagee and mortgagor.

19. It is contended by the counsel for the respondents that the statement by the mortgagee in the deed of assignment, that the assignee will be entitled to receive the amount under the original mortgage, is only an assurance made by a creditor to his assignee about the assignee's rights in respect of the mortgage assigned to him, and such a statement cannot be said to be an admission of jural relationship with the mortgagor. It is pointed out that the earlier view, that when a mortgagee sells or assigns his mortgage rights, the very fact that he was selling or assigning his rights was a clear acknowledgement of a subsisting mortgage and of his subsisting rights as a mortgagee, is no longer valid. It also pointed out that in *TILAK RAM* (supra), this Court clarified that the act of assignment/transfer/sale of the mortgage rights, by the mortgagee, by itself will not amount to an acknowledgement, if the document merely described the status of the mortgagee or described the right that was being transferred, without indicating any intention to admit his jural relationship with the mortgagor. It is, therefore, contended that the assignment deed in this case cannot be considered to be an 'acknowledgement'.

20. The contention ignores the purport and scope of Section 18 and proceeds on the assumption that an acknowledgement can be made only by a 'debtor' and there is no question of a 'creditor' making an acknowledgement. Section 18 of the Act deals not only with acknowledgement of debts, but acknowledgements with reference to all suits involving properties or rights for which limitation is prescribed under the Act. It sets out the circumstances in which a fresh period of limitation can be computed for a suit. If the suit is one for recovery of the amount due under an on-demand promissory note, no doubt, only an acknowledgement by the debtor can extend the period of limitation. But in regard to mortgages, T.P. Act has created and recognized rights as well as obligations both in the mortgagor and the mortgagee (vide Chapter IV of the Transfer of Property Act, in particular, Sections 60 and 67). Section 18 of the new Act provides that where before the expiry of the prescribed period for a suit in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made by the party against whom such property or right is claimed, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. An acknowledgement u/s 18 can, therefore, be by a mortgagee also, and such acknowledgement will extend the limitation for a suit against the mortgagee in respect of the property or right claimed against him.

21. We may illustrate as to what is a mere reference or description of the jural relationship and what constitutes an intention to admit the jural relationship. If the relevant portion of the Deed of assignment, sought to be relied on as an acknowledgement merely stated that "X mortgaged the schedule property in my favour under deed of usufructuary mortgage dated (date) and I hereby assign

the said mortgage in your favour", it will not be an 'acknowledgement' u/s 18 of the Act. This is because it refers only to the jural relationship, but does not show an intention to admit the jural relationship with the mortgagor or admit his subsisting liability as mortgagee of being redeemed. But the position will be different, if the assignment deed further stated: "The said mortgage is subsisting" or "The rights and obligations under the said mortgage are enforceable", or "The assignee is entitled to all benefits under the said mortgage", or "The assignee is entitled to receive the amount advanced under the said mortgage", or "The assignee is entitled to all rights and liable for all obligations under the said mortgage", or "The assignee is entitled to continue in possession until the mortgage is redeemed". The use of any such words (which are illustrative and not exhaustive) would show an intention to admit the jural relationship, and therefore, amount to acknowledgement, though they may not refer to the mortgagor's right of redemption. Ultimately, it is not the form of the words, but the intention to admit the jural relationship with the mortgagor, that will determine whether a statement is an acknowledgement.

22. In this case, the operative portion of the deed of assignment dated 12.2.1954 (Ex.A-3) states that in consideration of having received Rs. 300/-, the mortgagee (Krishna Pillai) was assigning the mortgage under deed dated 7.9.1935 executed in his favour by Manickam Pillai and delivered possession of the mortgaged property to Soundararaja Iyenger. The deed further states that the assignee (Soundararaja Iyenger) was entitled to receive all the amounts as per the original mortgage. The further statement that the assignee is entitled to receive the amount as per the original mortgage is an assertion of the right of the mortgagee against the mortgagor under the mortgage, and consequently, an admission of the subsistence of the mortgage and of the jural relationship between the mortgagee and the mortgagor. It is an acknowledgement u/s 18 of the Act. The High Court though referred to the said further statement in the deed of assignment, missed its significance and erroneously held that the deed contained only a passing reference to the mortgage, and not a conscious acknowledgement.

23. When the said deed of assignment was executed on 12.2.1954, the mortgage dated 7.9.1935 was subsisting, as the period of limitation at that time, was 60 years. In view of the admission of jural relationship contained in the assignment deed, operating as an acknowledgement of liability, a fresh period of limitation started from 12.2.1954. When the suit was filed on 16.11.1981, the new Limitation Act was in force under which the period of limitation was 30 years. When the 30 years period is computed from 12.2.1954, the suit filed in the year 1981 was clearly within limitation.

Re: question (ii):

24. The plaintiffs have made the necessary averments in the plaint for invoking and seeking relief under the Tamil Nadu Debt Relief Act, 1979. The plaintiffs contended that having regard to the fact that the mortgagee and his successors

had been in possession for more than ten years, the mortgage stood discharged with effect from 14.7.1978 u/s 9 (5)(a) of the Debt Relief Act and therefore, they are entitled to sue for redemption.

25. The trial court held that the question of the mortgage being discharged under the provisions of the Debt Relief Act, 1979, would arise only if the mortgage dated 9.7.1935 was subsisting as on 15.7.1978 when the said Debt Relief Act came into force. As it was of the view that the right to redeem was barred by limitation as on 1.1.1971, and the mortgage was not subsisting when the Debt Relief Act came into force, it held that no relief could be claimed by the plaintiffs with reference to the Debt Relief Act.

26. On the other hand, the first Appellate Court held that the mortgage was subsisting on the date when the Debt Relief Act came into force and therefore, the mortgage debt got discharged u/s 9 of the Debt Relief Act with effect from 14.7.1978, and the suit for redemption for redemption was not barred. The High Court in second appeal held that the deed of assignment dated 12.2.1954 did not amount to an acknowledgement and consequently, the limitation for a suit for redemption of the mortgage expired on 1.1.1971 having regard to the provisions of Section 30 read with Article 61(a) of the Limitation Act. It also held that as the mortgage was not subsisting when the Debt Relief Act came into force on 15.12.1978, the question of mortgage getting discharged u/s 9 of the Debt Relief Act did not arise.

27. While dealing with the first question, we have held that the period of limitation for the suit for redemption had to be reckoned from 12.2.1954 and not from 7.9.1935. Therefore, when the Debt Relief Act, came into force on 15.7.1978, the mortgage was very much subsisting. Section 9 of the Debt Relief Act contains special provisions in respect of mortgages. Sub-section (1) of Section 9 provides that the provisions of the said section applies to all mortgages executed at any time before 14.7.1978 and by virtue of which the mortgagee is in possession of the property mortgaged to him. Sub-section (5) of Section 9 provides that where the mortgagee has been in possession of the mortgaged property for an aggregate period of 10 years or more, then, the mortgage debt shall be deemed to have been wholly discharged with effect from expiry of the period of ten years or where such period expired before 14.7.1978, with effect from 14.7.1978. The said provision applies as the mortgage transaction does not fall under any of the exceptions enumerated in Section 4 of the said Act. As the mortgagee and his successors were in possession of the mortgaged property ever since 7.9.1935, that is, for more than 10 years as on the date when the Act came into force, the said mortgage debt stood wholly discharged with effect from 14.7.1978.

Re: Question (iii):

28. As the mortgage stood discharged on 14.7.1978, the plaintiffs will be entitled to a final decree for redemption without the need to undergo the formality of a

preliminary decree and taking of an account of the amount due under the mortgage.

29. The next question is whether the plaintiffs are entitled to a direction for accounts of the income/profits from the property from 14.7.1978. The provisions of Order 34 Rules 7, 8, 8A, 9, 10 and 10A of CPC are relevant in addition to the provisions of T.P. Act. It is no doubt true that a decree for redemption would include a direction for entire accounts between the parties in relation to the mortgage. But the question of directing accounts would arise only where it is necessary to find out what is due from the mortgagor to the mortgagee, or whether there is any over payment by the mortgagor to the mortgagee. In this case, the mortgage was an usufructuary mortgage, where the mortgagee was entitled to retain possession until the mortgage money was paid. When the mortgage debt got statutorily discharged, the mortgagee became liable to deliver back possession to the mortgagor. In such a situation, what the mortgagors-plaintiffs can claim from the mortgagee, is not rendition of accounts, but mesne profits for wrongful possession from the date of discharge of the mortgage debt. There is, therefore, no question of accounting either of the amounts due by the mortgagor to the mortgagee or of any accounting of over-payments or for refund of any over- payments by the mortgagee. In the suit, plaintiffs only sought rendition of accounts but did not claim mesne profits nor paid any court fee in regard to past mesne profits. Plaintiffs cannot, under the guise of a claim for accounts, seek a decree for mesne profits. After obtaining possession, it is open to them to sue for such mesne profits as is permissible in law.

30. This takes us to the application filed by the third defendant before the High Court for amendment of the description of the property. The third defendant contended that the description of the property in the plaint schedule was not in accordance with the mortgage deed dated 7.5.1935, but referred to a larger area with reference to the deed of settlement executed by Thukkaram and Yasodhabai Ammal in favour of the first plaintiff on 24.8.1981 (Ex. A-2). The relief of redemption can be only in regard to the property mortgaged under the deed of mortgage and not in regard to any other property. Therefore, the decree has to be amended so as to bring the description of the mortgaged property in consonance with the description of the property mortgaged under the deed of mortgage dated 7.9.1935 (Ex. A-1)

31. In view of the above, this appeal is allowed as follows:-

- a) The judgment of the High Court is set aside and the suit is decreed, holding that the plaintiffs are entitled to a decree for redemption in regard to the suit property. Final decree shall be drawn accordingly.
- b) The prayer for rendition of accounts is rejected.
- c) The schedule to the decree containing the description of the mortgaged property shall be amended so as to bring it in conformity with the schedule to the mortgage deed dated 7.9.1935.

d) Appellants/plaintiffs will be entitled to costs throughout.