
(1946) 03 MAD CK 0054
In the Madras High Court

Puliyadi Rajagopala Aiyar

APPELLANT

Vs

Karuppiyah Pandithan by this authorised agent, Ganapathi
Pandithan

RESPONDENT

Date of Decision : 13-03-1946

Acts Referred:

Citation : (1946) 59 LW 356 : (1946) 1 MLJ 392

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—This is an appeal against an order in execution, disallowing to the appellant credit for public taxes, which, he alleges, he paid for the property in respect of which there was a redemption decree. The decree provides that the first defendant do pay to the plaintiff mesne profits at Rs. 65 per mensem from the date of the plaint, namely, 1st August, 1941. The public charges in the shape of taxes for the house property mortgaged were paid by the first defendant after the amount due under the decree was tendered. The Subordinate Judge has held that the first defendant was not entitled to credit for the public charges. He referred in this connection to Section 76, sub-clause (i) of the Transfer of Property Act.

2. It was held in Subbarao v. Sarvarayudu (1922) 44 M.L.J. 534 : ILR 47 Mad. 7, on the interpretation of the language of the sub-clause, as it stood prior to its amendment in 1929, that the position of a mortgagee after the tender could not be regarded as even worse than that of a trespasser and that, as a trespasser would be entitled to deduction out of the mesne profits in respect of payment of taxes, the mortgagee, even though he was to account for the whole of the gross receipts, must be similarly allowed credit for such payments. In Subbarao v. Sarvarayudu (1922) 44 M.L.J. 534 : ILR 47 Mad. 7, were to govern us, the appellant must succeed. But the view taken in that decision was expressly superseded by the amendment in 1929, as a result of which the word " gross " was omitted before the word " receipts " and the following words were added at

the end of the sub-clause, viz., " and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property."

3. There is no warrant for limiting the word " expenses " to what has to be spent in connection with the management and in respect of the collection of rents and profits. Clause (h) of the section refers to the public charges also as expenses. The object of making the provisions so stringent against the mortgagee is obviously to see that he does not delay the delivery of possession by the adoption of some device or another.

4. There is another difficulty in this case. We are not at the stage when the mesne profits are yet to be ascertained. They were fixed in the preliminary decree itself at Rs. 65 per mensem and we do not know whether public charges were not taken into account when the amount was thus arrived at.

5. The view taken by the Subordinate Judge is right and the appeal is dismissed but without any order as to costs, as the respondent is unrepresented.