

(1949) 10 MAD CK 0040

In the Madras High Court

Case No : Appeal No. 415 of 1945

Raja Suraneni Suryaprakasa Rayanimgar and Another

APPELLANT

Vs

Dodla Balaramireddi and Others

RESPONDENT

Date of Decision : 24-10-1949

Acts Referred:

Tamil Nadu Agriculturists Relief Act, 1938 — Section 7

Citation : AIR 1950 Mad 766 : (1942) 55 LW 182

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : V. Vedantachari and K. Mangachari, for the Appellant; O. Chinappa Reddi and K. Venkataratnam, for the Respondent

Judgement

Govinda Menon, J.—Defendants 1 and 5 in O. S. No. 62 of 1943 on the file of the Court of the Subordinate Judge, Nellore, appeal against

that portion of the learned Judge's decree by which relief under the Madras Agriculturists, Relief Act (IV [4] of 1938) had not been given in favour

of defendant 5; and the question that arises for decision is whether defendant 5, admittedly a non-agriculturist is entitled to claim the benefits of Act

IV [4] of 1938, in view of the circumstances of the present case. Defendant 1, the father and his three sons, defendants 2 to 4 are mortgagors of

certain properties mortgaged in favour of the plaintiff. Defendant 4 was not actually an executant of the document. The mortgage was dated 30th

October 1929. Subsequently on 4th October 1935, defendant 1 paid Rs. 5 towards the mortgage and acknowledged the existence of the debt by

EX. P-1 (a). In the meanwhile, on 12th June 1933, by EX. P-4, defendant 1 made a gift of this property in favour of his son-in-law, defendant 5,

There is no doubt a clause in EX. P-4 whereby defendant 1 had agreed to

discharge the encumbrance existing on the property. But he did not do so on the other hand, he acknowledged the mortgage debt without paying the same. The suit filed on 17th August 1943 was opposed by defendant 5 and the principal contest in the appeal is by defendant 5 though defendant 1 is also an appellant. The question is whether defendant 5 is entitled to the benefits of the Act. The lower Court has found that defendant 1 was an agriculturist and defendant 5, not. On account of that a decree by sale of the hypotheca was passed in favour of the plaintiff for the amount claimed without giving any deduction under Madras Act IV [4] of 1938.

2. The question that arises for consideration is really covered by the decision of Wadsworth J., in C.N. Suganatha Mudaliar Vs. S.K.

Kuppuswami Chetty and Another, , where the learned Judge held that a non-agriculturist purchaser of a hypotheca is not entitled to relief in

respect of a mortgage debt under Act IV [4] of 1938 when the agriculturist mortgagor was not at the time when the matter came before the Court,

a person liable to discharge the debt. Therefore it was held that such a purchaser was not entitled to have the debt scaled down merely because

the mortgagor was at the commencement of the Act an agriculturist entitled to the benefits of the Act which benefit he has not claimed. In this

connection the learned Judge referred to an earlier decision of himself and Patanjali Sastri J., reported in Sree Rajah Vadrevu Viswa Sundara Row

Bahadur Vs. Vadlamannati Kusalamayya (died) and Others, , where similar observations were made. Extracting a passage from the decision in

Sree Rajah Vadrevu Viswa Sundara Row Bahadur Vs. Vadlamannati Kusalamayya (died) and Others, , the learned Judge held that the

fortuitous benefit cannot be claimed as of right by the purchaser who is not an agriculturist. It is the incidental result of a claim successfully

advanced by the mortgagors. In both those cases at the time the Act came into force the mortgagor was entitled to the benefits of the Act ; but on

the date when the suit was filed the mortgagor was not so entitled. That is clear from Sree Rajah Vadrevu Viswa Sundara Row Bahadur Vs.

Vadlamannati Kusalamayya (died) and Others, . Mr. Vedantachariar for the appellant tries to distinguish these cases on the ground that in both

the cases, C.N. Suganatha Mudaliar Vs. S.K. Kuppuswami Chetty and Another,

and Sree Rajah Vadrevu Viswa Sundara Row Bahadur Vs.

Vadlamannati Kusalaramayya (died) and Others, , the mortgagor did not claim any benefit under the Act ; whereas in the present case he has

claimed the benefit and that would make all the difference between those decisions and the present appeal. But in the discussion in C.N.

Suganantha Mudaliar Vs. S.K. Kuppaswami Chetty and Another, , the learned Judge has stated that the mortgagors had not claimed any relief and

while explaining the earlier case and stating its facts, Wadsworth J., impliedly stated that the question of the mortgagor claiming the benefit would

arise only if he is legally entitled to claim it and not as in the present case where all the remedies which he had, were barred at the time of the suit.

3. Mr. Vedantachariar invited our attention to a few earlier cases, the earliest of them being Arunachalam Pillai v. Seetharam Naidu, 1941 1 M. L.

J. 561 : AIR 1941 Mad. 584. That laid down the general proposition that where in a suit to enforce a mortgage against an agriculturist mortgagor

there is a purchaser of the whole or a portion of the equity of redemption who is not himself an agriculturist the benefits of scaling down granted by

Act IV [4] of 1938 which a mortgagor agriculturist could have claimed would enure to the benefit of the non-agriculturist purchaser ; and in coming

to that conclusion the learned Judges held that

the purchaser in Court auction took the property subject to the burden of the mortgage and if the burden is by reason of the provisions of Section

8 of Act IV [4] of 1938 reduced without payment, the purchase proves to that extent an advantageous one and there is nothing in the Act to

deprive the purchaser of the fruits of his lucky purchase even though he is not an agriculturist.

Looking into the facts of that case, it is clear to us that there the mortgagor could have claimed a relief because he was not prevented by any

provisions of law from claiming that and when he claimed that benefit, the non-agriculturist purchaser who stands in his shoes to a certain extent is

also entitled to the same. Mr. Vedantachariar also wanted us to hold that the two decisions above referred to had been distinguished in a later

decision in T.N.V. Kailasa Thevar Vs. V. Ramaswami Ayyangar and Others, , by Happell and Govindarajachariar JJ. On a close reading of this

decision we find that in that particular case there was in fact an application by

some of the judgment-debtors to scale down the decree which was allowed. As against one of them the application to scale down had been dismissed and, therefore, he could not have claimed the benefits of the Act. It is in such circumstances that the learned Judges say that whatever benefits accrued to the judgment-debtors who had applied, and successfully, to get relief under the Act could enure to the benefit of the other person who by some reason or other was not entitled to claim it on that particular occasion. It seems to us that that decision is also distinguishable from the facts of the present case.

4. An earlier case in *Papammat v. Ramaswami Chettiar* 1948 2 M. L. J. 498 : A. I. R. 1942 Mad. 726, has been brought to our notice for

supporting the contention that in matters like this, the crucial date when the Court has to view the applicability of the Act is not the date when the

suit is filed but on 1st October 1937 when, according to Madras Act IV [4] of 1938, the commencement of the Act should be deemed to have

taken place. We do not think that the observations in *Pappammal Vs. Ramaswami Chettiar*, , can be usefully applied to the present case. In

addition, our attention has been called to two other cases in *Subbaraya Goundan Vs. O.K. Nachimuthu Mudaliar and Another*, and *Alapati*

Ankamma Vs. Pavuluri Basava Punneyya, , the latter of them to support the contention that it is the duty of the creditor to scale down the debt

himself without any kind of application or act on the part of the debtor. How far the observations of Patanjali Sastri J., in *Alapati Ankamma Vs.*

Pavuluri Basava Punneyya, , are really necessary for the decision of that case we need not now go into. But the proposition which Mr.

Vedantachariar contends that in all cases where the Agriculturists Relief Act has to be applied, even if the debtor does not raise his little finger or

claim any benefit the creditor and the Court should take upon themselves the duty of scaling down the debt is a very wide one which would render

innocuous and otiose the other decisions regarding the duty of an agriculturist debtor.

5. It seems to us, therefore, that the facts of the present case are indistinguishable from the case in *C.N. Suganatha Mudaliar Vs. S.K.*

Kuppuswami Chetty and Another, . We are in perfect agreement with the decision of the learned Judge and we find it difficult to say that that

decision is wrong especially in view of the fact that it is based upon observations contained in Sree Rajah Vadrevu Viswa Sundara Row Bahadur

Vs. Vadlamannati Kusalaramayya (died) and Others, , which was a decision by a Bench. In these circumstances we are of opinion that the

decision of the lower Court is eight.

6. It is pointed out to us that the decree as drafted by the lower Court makes all the defendants liable to ""pay into Court on or before 31st July

1945"" As even the personal decree against defendant 1 is barred and as the properties now admittedly belong to defendant 5, the decree

should be modified by stating that defendant 5 as successor-in-interest of the mortgagor do, out of the mortgaged properties, pay the amount of

etc., etc.

7. With the modification indicated above, the appeal is dismissed with costs.