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(1992) 03 MAD CK 0047

In the Madras High Court

Ramasamy Gounder (deceased) and Another — APPELLANT

Vs

The Special Tahsildar (Debt Relief) and Others — RESPONDENT

Date of Decision : 19-03-1992

Acts Referred:

Citation : (1992) 2 LW 502 : (1992) 2 MLJ 379

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—On 13.7.1972, the 3rd respondent and others executed a mortgage deed in favour of the petitioner for a sum of Rs. 7,000. On 19.1.1981, the petitioner filed a suit in O.S.No.1138 of 1981 on the file of the Sub-Court, Vellore against the third respondent and others for the recovery of a sum of Rs. 4,593.63 with future interest on the basis of the mortgage deed dated 12.7.1972. The mortgagors submitted to a decree in the suit on 27.3.1982 and a preliminary decree was passed in favour of the petitioner on that day. During the pendency of the mortgage suit O.S.No.1138 of 1981, the third respondent in 1982 filed an application before the first respondent under the provisions of Tamil Nadu Debt Relief Act 13 of 1980 (hereinafter called ''the Act'') claiming that she was a debtor entitled to the benefits of the Act and praying for the issue of certificate of redemption with regard to the mortgage debt. The first respondent accepted the case of the third respondent and granted a certificate of redemption of the mortgage debt in favour of the third respondent. Thereafter, the petitioner preferred an appeal before the 2nd respondent and the second respondent by his order dated 6.1.1984 confirmed the order of the first respondent and disposed of the appeal. Aggrieved by the orders of the respondents 1 and 2, the petitioner has filed this writ petition for the issue of a writ of certiorari to quash the orders of the respondents 1 and 2.

2. Mr. M.N. Muthukumaran, the learned Counsel appearing for the petitioners would submit that the authorities constituted under the Act will have no jurisdiction to entertain the application of a person claiming to be a debtor when

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a suit had already been filed for the recovery of the debt in question and pending before the civil court. The learned Counsel further submitted that as the 3rd respondent in the present case applied for a certificate of redemption before the first respondent under the provisions of the Act, during the pendency of the suit O.S.No.1138 of 1981, the respondents have no jurisdiction to issue the certificate of redemption under the provisions of the Act. In support of his contention, the learned Counsel relied on the decision of a Division Bench of this Court in K.V.S.R. Subramanian Chettiar Vs. Revenue Divisional Officer, Arantangi Pudukottai District and Others, . There is force in the contention of the learned Counsel for the petitioner. In the decision referred to above, the. mortgagee filed two suits in the civil court to recover the mortgage amounts against the mortgagor. The mortgagor filed an application under Seq.6 of the Act, claiming benefits under the Act and seeking a certificate of redemption of the mortgage debt before the Special Tahsildar (Debt Relief). He granted the certificate. On appeal, the appellate authority confirmed the order of the Special Tahsildar. The Division Bench in that case held that the mortgagor cannot seek an adjudication before the Tahsildaron the question whether he is entitled to the benefits of the Act in pending suits and the mortgagor can seek the relief under the Act only before the Civil Court. The Division Bench while coming to such a conclusion has held as follows :

It is no doubt true that Section 4(1)(b) of the Act says that no civil court shall entertain any suit or other proceedings against the debtor for the recovery of any amount of such debt and Section 4(1)(c) says that all suits and other proceedings pendingat the commencement of the Act against any debtor for the recovery of any such debt shall abate. However, the prohibition of the civil Court to entertain a suit and the abatement of all existing suits and other proceedings will arise only, if the debtor is found entitled to the benefits of the Act. Therefore, the Civil Court wherein suits or other proceedings are pending against the debtor has to come to a conclusion as to whether the debtor is entitled to the benefits of the Act or not. Sections 5 and 6 of the Act do not use a nonabs tante clause giving the Tahsildar a power to override the decision of the Civil Court as regards the question whether a party before the civil court is a person entitled to the benefits of the Act, and the Tahsildar, acting u/s 5 or 6 of the Act cannot be expected to render a decision on the question as to whether the debtor is entitled to the benefits of the Act and call upon the civil court to abide by that decision. As pointed out by Ratnam, J. in Perumal v. Kuppanna AIR 1981 Mad. 271 the Tahsildar acting u/s 5 or Section 6 cannot assume the functions of a civil court, which has to necessarily determine as a jurisdictional issue as to whether the party before it is a debtor entitled to the benefits of the Act, for deciding the question of maintainability of the suit or for deciding the question of abatement referred to above. Admittedly there is no express provision taking away the jurisdiction of the civil court to decide the question as to whether a particular person is entitled to the benefits of the Act or not. In a suit or proceeding initiated by a creditor in a civil court, the court has to decide the question as to

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whether the defendant in that suit or proceeding is a debtor as defined in the Act, as a jurisdictional issue and such jurisdictional issue has to be decided only by the court itself before pronouncing its decision on the question of maintainability of the suit or proceeding or on the question of abatement. In this view of the matter, we have to hold in the present case that as creditor has already filed two suits for recovery of the mortgage amount and those suits are pending the third respondent herein, who is the defendant in those suits, has to seek an adjudication before the civil court on the question as to whether he is entitled to the benefits of the Act and if the court comes to the conclusion that be is entitled to the benefits of the Act, then the court has to dispose of the suits in accordance with Section 4 of the Act.

3. The present case is directly covered by the decision in K.V.S.R. Subramanian Chettiar Vs. Revenue Divisional Officer, Arantangi Pudukottai District and Others, . Admittedly, when the 3rd respondent filed an application before the Tahsildar (debt relief) claiming benefits under the Act and seeking the certificate of redemption of the mortgage debt; the suit O.S.No.1188 of 1981 filed by the petitioner was pending and it was decreed on 27.3.1982. In a suit or proceeding initiated by a creditor in a civil court, the Court has to decide the question as to whether the defendant in that suit or proceeding is a debtor as defined under the Act and in such circumstances, the mortgagor cannot seek any adjudication before the authorities under the Act claiming relief under the Act. In these circumstances it has to be held that the respondents 1 and 2 have no jurisdiction to entertain the application of the 3rd respondent, claiming to be a debtor entitled to the benefits of the Act when a suit had already been filed for recovery of the debt in question and pending before the civil court. Therefore, it has to be held that the orders of the respondents 1 and 2 are illegal and are liable to be set aside. Consequcntly, the Writ Petition is allowed and the orders challenged in this writ petition are set aside. However, it is open to the third respondent to raise the plea that she is entitled to the benefits of the Act in the execution proceedings, if the law permits her to do so. No costs.

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