(1952) 11 MAD CK 0034

In the Madras High Court

Case No : A.A.O. No. 299 of 1951

Sriramulu Naidu APPELLANT

Vs

Jambulingam Pillai and Another RESPONDENT

Date of Decision : 25-11-1952

Acts Referred:

Limitation Act, 1908 — Article 83
Transfer of Property Act, 1882 — Section 58

Citation : AIR 1953 Mad 603

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : A. Balasubramania Iyer, for the Appellant; K.V. Srinivasa Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The plaintiff executed a deed of simple mortgage in favour of one Kandaswami Pilial for Rs. 500 on 12-10-1922. The money due under that deed was payable at the end of three years. On 6-5-1925 the plaintiff executed Ex. A. 1, a deed of usufructuary mortgage, in favour of defendant 1. As part of the purchase price, the defendant was directed to pay off the money due to Kandaswami Pillal under the first mortgage. It was common ground that the defendant never paid this amount. Kandaswami filed a suit to enforce the mortgage and obtained a decree, Ex. A. 2 on 30-8-1938. In execution of that decree the hypotheca was brought to sale on 3-3-1943. The sale was confirmed on 10-4-1943. The plaintiff instituted the suit, out of which this civil miscellaneous appeal arose, on 1-4-1946, claiming damages for the breach of the contract between the plaintiff and defendant 1 evidenced by Ex. A. 1, under which defendant 1 had undertaken to redeem the mortgage effected by the plaintiff in favour of Kandaswami.

2. The learned Munsif held that the plaintiff''s claim was barred by limitation. Hence the plaintiffs suit was dismissed. On appeal, the learned Subordinate

Judge held that Article 83, Limitation Act applied, and that the period should be computed from 10-4-1943, on which date the sale was confirmed, thus finally extinguishing the right of the plaintiff as well as defendant 1 to redeem the mortgage which had been effected in favour of Kandaswami. The learned Subordinate Judge further held that, as the learned Munsif had not decided specifically either the liability of the defendant to pay the damages claimed by the plaintiff, or the quantum of those damages, the suit would have to be remanded for determination of those issues in accordance with the directions given in the appellate judgment. There was also the claim that defendant 1, as an agriculturist, was entitled to the benefits of Madras Act 4 of 1938.

3. Defendant 2, one of the legal representatives of defendant 1, preferred this appeal against the order of remand by the learned Subordinate Judge.

4. Learned counsel for the appellant urged that, since the liability of the defendant to pay the amount due to Kandaswami under the mortgage effected in his favour arose on 12-10-1925, that is three years after the date of mortgage in favour of Kandaswami, the present suit filed in 1946 was barred by limitation. Learned counsel relied on -- ''Dorasinga Tevar v. Arunachalam Chetti'', 23 Mad 441 (A). All that could be held on this basis of that case, is that in such a contingency the plaintiff could, at any time after 12-10-1925, have filed a suit claiming damages for breach of contract occasioned by the failure of the vendee to discharge his obligations to pay a portion or the whole of the purchase money to clear off a pre-existing encumbrance. 23 Mad 441 (A) is not an authority for the position, for which learned counsel for the appellant contends now, that the vendor i.e., the plaintiff in this case, had no other remedy open to him. The learned Subordinate Judge rightly came to the conclusion, that the damage sustained by the plaintiff in this case was on the final extinction of the right to redeem the mortgage in favour of Kandaswami, and that that extinction was on 10-4-1943. I see no reason to differ from the learned Subordinate Judge. On that finding the learned Judge was right in holding that Article 83 , Limitation Act applied and that the suit filed on 1-4-1946 was in time.

5. The next contention of the learned counsel for the appellant was that there was no necessity for a remand at all. The plaintiff''s claim was for an ascertained sum based upon the amount which the defendant had failed to pay to Kandaswami with interest thereon, But the learned Subordinate Judge rightly pointed out that that may not be the only basis for ascertaining the damages which the plaintiff claimed he sustained by the breach of contract by the defendant. The market value of the property could give a fair basis for ascertaining the actual loss sustained by the plaintiff. As the learned Subordinate Judge pointed out) it may even eventually mean that the plaintiff suffered no damages at all. Since there was no evidence on the market value of the property and since the trial Court did not assess the quantum of damages on any basis, the learned Subordinate Judge had no option but to remand the suit for ascertaining the correct basis for assessing the damages to which the plaintiff

would be entitled. There is also, as I have pointed out earlier, the question whether the defendant would be entitled to any relief under Act 4 of 1938.

6. The order of the lower Court is confirmed and the appeal is dismissed with costs.

7. Leave to appeal is refused.

