

(1990) 07 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 9808 of 1982

Subbammal Gounder

APPELLANT

Vs

The Special Tahsildar, Debt Relief, Cheranmahadevi and two others

RESPONDENT

Date of Decision : 24-07-1990

Acts Referred:

Citation : (1990) 07 MAD CK 0001

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : P.N. Kapoor for Mr. S. Desikan, for the Appellant; Muthappan, Government Advocate and Mr. K. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

Kanakaraj, J.—The petitioner purchased the property involved in this case from one Subbiah and Bagavathiappa by sale deed dated 17-1-

1976. There was an earlier mortgage by the vendor of the petitioners to one Ayyanoothumuthu, the 3rd respondent here in, the loan amount being

Rs. 4,000. Claiming to have purchased the equity of redemption, the petitioner filed a petition before the first respondent claiming relief under the

Tamil Nadu Debt Relief Act (Act 13 of 1980 and prayed for an order under S.12 of the Tamil Nadu Debt Relief Act (hereinafter referred to as

the Act) that the mortgage was discharged. The first respondent passed an order on 3-2-1981 rejecting the claim of the petitioner. The reason

given by the first respondent is that the purchase was for a sum of Rs. 6,150 including the mortgage amount payable to the 3rd respondent. In the

recitals of the sale deed, it had been specifically stated that the mortgage amount of Rs. 3,600 due to the 3rd respondent shall be paid by the

petitioner together with subsequent interest. Therefore, in effect what it sought to be brought within the Act is the price of the property purchased

by the petitioner. The first respondent, therefore held that the provisions of the Act are not applicable to the case of the petitioner. On appeal, the

second respondent confirmed the said order by proceeding dated 30-11-1981. It is the validity of the said order that is challenged in this writ

petition. The only contention before me is that what was purchased by the petitioner is only the equity of the redemption and therefore, it cannot be

said that the Debt Relief Act will not apply to the facts of this case.

2. Learned counsel for the 3rd respondent cited the judgment of the Division of this Court in *S. Baraham v. State of Tamil Nadu* (1983) 1 M.L.J.

273. It has been clearly held in that case that a purchaser who has undertaken to discharge the liability to pay the mortgage amount on behalf of his

vendor cannot take advantage of the provisions of the Tamil Nadu Debt Relief Act (Act XIII of 1980) ignoring the provisions of S.12(i) of the

Act. If the provision in S. 12 (i) is restricted to a claim made only by the vendor himself, the object of that provision which is to see that the debtor

does not make an unlawful or unjust gain by withholding the price of the property will be completely defeated. Bound as I am, by the said

judgment of the Division Bench of this Court, this petition is dismissed. There will be no order as to costs.