

(1993) 10 SC CK 0095

In the Supreme Court Of India

Case No : Civil Appeal No. 1886 Of 1981

Vaideswara Iyer and Another

APPELLANT

Vs

Kamakshi Ammal and Others

RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Limitation Act, 1963 — Article 61(a)

Citation : (1994) 2 SCC 524 Supp

Hon'ble Judges : S. P. Bharucha, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. THIS appeal by special leave is directed against the judgment and order of the Madras High court dismissing a second appeal.

2. A suit (being suit No. O.S. No. 576 of 1971 was filed in the court of the District MunsifThiruvaiyaru by the 1st respondent before us for redemption of a mortgage (othi) created under a deed dated 10/01/1923 by the 1st respondent's father in favour of the appellants' predecessors in title Kumaraswami Sholanga Thevar and Pichaiyya Kongarayar, for the sum of Rs. 1,000.00. It was the case of the I st respondent that, by reason of the operation of the Madras Agricultural Relief Act, 1938 as amended by the Act 24 of 1950, the mortgage debt had been wiped out on 10/01/1953 and he was entitled to redemption and possession of the mortgaged property (subject to the right of another respondent to continue in possession as a cultivating tenant with which right we are not here concerned). The defence of the successors in title of the original mortgagees was that the suit was barred by the law of limitation. The defence was upheld by the District Munsif, who dismissed the suit. On appeal the District Judge, Thanjavur, held that the suit was not barred by limitation and he decreed it. Before the High court, as the High court states, there was no dispute about the fact that the mortgage under the deed dated 10/01/1923, was wiped out by the operation of the aforementioned Tamil Nadu Acts as on 10/01/1953 and the question to be

considered was whether the period of limitation computed from 10/01/1953 was 12 years or 30 years. The High court came to the conclusion that as the suit had been instituted within 30 years from 10/01/1953, it was not barred by limitation. Against the judgment and order of the High court the successors in title of the original mortgagees are in appeal before us.

3. The rival provisions of the Schedule to the Limitation Act, 1963 are Article 61(a) and Article 65. Under Article 61 (a) a suit by a mortgagor to redeem or recover possession of an immovable property mortgaged has to be filed within 30 years from the date on which the right to redeem or to recover possession accrues. Article 65 states that a suit for possession of immovable property or any interest therein based on title must be filed within 12 years from the date upon which the possession of the defendant becomes adverse to the plaintiff.

4. IT will be noted that Article 61(a) refers not only to a suit to redeem but also to a suit to recover possession of immovable property mortgaged. On 10/01/1953, by operation of the aforementioned Tamil Nadu Acts, the mortgage ceased to exist and upon that date the mortgagor acquired the right to recover possession of the immovable property mortgaged. In our view, the suit is squarely covered by Article 61(a). Looked at the other way. Article 65 has no application because in a case such as this it cannot be said that on 10/01/1953, the possession of the defendant became adverse to that of the plaintiffs so that the suit to recover possession had to be filed within 12 years from that date

5. LEARNED counsel for the appellants drew attention to this court's judgment in *Surajnath Ahir v. Prithinath Singh* and the judgment in review thereof, being *Prithi Nath Singh v. Suraj Ahir*. The original judgment has no application at all to the case before us. In the judgment in review this court referred with approval to the judgment of the Allahabad High court in *Ram Prasad v. Bishambhar Singh* where it was said; At the moment when the rents and profits of the mortgaged property sufficed to discharge the principal secured by the mortgage, the mortgage came to an end and the correlative right arose in the mortgagor to recover possession of the property. This would seem to support our view that a suit filed by the mortgagor to recover possession of the property is a suit that falls within Article 61(a) which speaks of a suit to recover possession of immovable property mortgaged.

6. WE may mention that having regard to the High court's statement that there was no dispute about the fact that the mortgage under the deed dated 10/01/1923, was wiped out by the operation of the aforementioned Tamil Nadu Acts on 10/01/1953, we have not permitted counsel to argue to the contrary, namely, to submit that, in effect, there was no mortgage in existence on 10/01/1953 which could be wiped out by the aforementioned Tamil Nadu Acts.

7. IN the result, the appeal is dismissed. There shall be no order as to costs.