(1927) 03 MAD CK 0101

In the Madras High Court

Vengubai Ammal APPELLANT

Vs

V. R. Ramaswami Iyer and Others RESPONDENT

Date of Decision : 23-03-1927

Acts Referred:

Citation : AIR 1927 Mad 964 : (1927) 26 LW 450

Judgement

1. The facts in this suit are that the plaintiff''s father got a simple mortgage for Rs. 900 on a house and other properties from the guardian of defendants 1 and 2 on 9th Septmber 1911. Ex. A is the mortgage-deed. The period of the mortgage was three years and interest was to be charged at 9 per cent per annum. Defendant 4 purchased some of the properties. He is the contesting respondent. Plaintiff-appellant sued on the mortgage and the question for decision was: What amount of interest has accrued on the mortgage?

2. Defendant 4 pleaded that at the time of the mortgage the mortgagee was let into possession of the house under a lease on the footing that the estimated rent of the house Rs. 5-6-0 should be set off month by month against the interest, Rule 6 12-0 due monthly, on the mortgage. A document, Ex. I, setting forth such an arrangement was sought to be filed, but both the lower Courts held it inadmissible for want of registration. I agree with them that Ex. I, read, as it must be, with Ex. A, indicates that the lease was for a period of at least three years. The lower appellate Court, however, finds as a fact that the mortgagee was let into possession of the house about the date of the mortgage and remained so until the date of suit. The point for decision here is whether as a matter of law the mortgagor or his representatives can claim in this mortgage suit to set off the rent of the house against the interest due on the mortgage. The lower appellate Court has held that Section 76, Transfer of Property Act, allows this and it is this proposition which the appellant attacks.

3. While it is clear that the mortgagee did not get into possession as mortgagee, I think it must be held on the facts that he got possession in his own interest in order that his debt might be paid off, that is, by way of further security for the

payment of his debt. That being so, I think it is a case to which Section 76 will apply: see Kishundayal Bhagat v. Mahabir Bhagat [1920] 5 Pat. L. J. 492 That section is not -in terms restricted to a mortgagee who takes possession as mortgagee and the principle of it would apply to all mortgagees who get into possession by way of further security for the payment of their debt. It will make no difference to this proposition that the lessee was in the position of a tenant holding over after the lease period had expired which would be the position of the plaintiff if the contract of lease had been proved. There is no hint in the plaintiff''s notices that he offered to put his mortgagor into possession after the expiry of the period fixed in the mortgage. It is clear that he was remaining in possession in order to enforce payment of his mortgage debt. I am, therefore, of opinion that the lower Court is right in holding that Section 76 applies, and I see no reason to interfere, and dismiss the appeal with costs.