

Vasudevan Nambudri Vs. Raman Nambudri

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Court : Chennai

Decided On : Sep-11-1940

Reported in : AIR1940Mad939; (1940)2MLJ712

Appellant : Vasudevan Nambudri

Respondent : Raman Nambudri

Judgement :

Patanjali Sastri, J.

1. The question that falls to be decided in this Civil Revision Petition is whether Section 15 of the Madras Agriculturists Relief Act is applicable to the surplus reserved as. payable to the mortgagor under a possessory mortgage after appropriating part of the usufruct in lieu of interest due on the mortgage money. The petitioner's predecessor-in-interest held the lands here in question on a kanom granted by the respondent on May 25, 1911, for Rs. 1,137-2-4. In consideration of a further advance of Rs. 862-13-8 making up a total of Rs. 2,000 the respondent executed on August 17, 1925, the deed (Ex. A) styled 'Kaivasam panayam' (possessory mortgage) under which the mortgagee was to appropriate, out of an estimated yield of 430 paras of paddy, 200, paras in lieu of interest on the mortgage money, pay 60 paras for assessment on the property and then pay the balance of 230 paras to the respondent as 'panaya purappad' in two instalments during the harvest season. The document further provided that if the panaya

purappad and assessment were allowed to fall into arrears, such arrears together with interest at the rate fixed should be applied in payment of the mortgage money, the value of paddy being calculated at the current market rate. There was also a provision charging such arrears of purappad, assessment and interest on the crops standing on the properties, the improvements thereon, and also the mortgage money. The panaya purappad fell into arrears and the petitioner who purchased the mortgagee's rights in execution sale and obtained delivery of the properties claims the benefit of Section 15 of Madras Act IV of 1938, depositing the purappad due for the year 1937-1938. It is not disputed that the petitioner is an agriculturist within the meaning of the Act and the only question is whether the purappad reserved under the panayam deed as payable to the jenmi is 'rent' within the meaning of the definition in S: 3, Clause (iii) of the Act, so as to entitle the petitioner to the benefit of Section 15. The Court below held that it was not and dismissed the petitioner's application. This revision petition is directed against that order.

2. It is argued for the petitioner that the transaction embodied in Ex. A, though styled a possessory mortgage operates also as a lease so far as the amount of paddy fixed as payable to the jenmi is concerned, and stress is laid on the use of the word 'purappad' (rent) in the document. The respondent, on the other hand, contends that Ex. A is nothing more than a possessory mortgage with an undertaking by the mortgagee to pay to the mortgagor the estimated surplus profits after paying the assessment due on the land and appropriating a specified portion of the usufruct in lieu of interest, The use of the word ' 'purappad', it is urged, is inconclusive and stress is laid on the provision already referred to that if the purappad is allowed to fall into arrears, the same with interest shall be applied in payment of the mortgage money. We are of opinion that the contention for the respondent is supported by the authorities cited on his behalf and must prevail. In *Venkateswara v. Kesava Shetti* I.L.R.(1879)Mad. 187, there was a mortgage with possession for a term of eight years of a piece of ground with a warehouse standing thereon. The rent of the warehouse was fixed at Rs. 16-12-0 per annum and it was agreed that out of this sum the mortgagee should appropriate Rs. 14 towards the payment of interest on the principal, and pay Rs. 2-12-0 as 'rent' to the mortgagor. Sometime after the mortgage the warehouse was destroyed by fire but

not owing to any fault or neglect of the mortgagee who thereupon ceased to pay the rent reserved to the mortgagor. In a suit by the latter to recover the site together with arrears of rent on the ground of default in payment of the rent, the question arose whether there was a contract of tenancy apart from the mortgage and the mortgagor was entitled to call upon the mortgagee to pay the rent reserved notwithstanding the destruction of the premises. The Court held that there was no agreement to let the premises apart from the mortgage and dismissed the suit as the plaintiff was not in a position to redeem the mortgage. Innes, J., observed:

The gist of the agreement was not a letting of the premises with a rent reserved but a usufructuary mortgage of the premises with a certain small portion of the income of it made payable to plaintiff.

Muthuswami Aiyar, J., put the matter thus:

The transaction between the parties is really a mortgage with possession for term of eight years. The contract to pay Rs. 2 3/4 per mensem is rather a subsidiary arrangement regarding the disposal of the surplus usufruct, or, in other words, an agreement to treat as money had and received for the plaintiff's use the surplus which, as mortgagee, the defendant must otherwise credit to the principal amount of the mortgage, than an independent engagement to pay rent as in an ordinary lease. I take the defendant to have really got into possession not as a tenant - not because he engaged to pay the plaintiff Rs. 2 3/4 a month for the use of the warehouse-but as a mortgagee, and because of the assignment of the usufruct in lieu of interest amounting to Rs. 14 per mensem.

3. The other decision cited for the respondent, Immani Seshayya v. Dronamraju Lakshminarasimha Rao Pantulu : AIR1930 Mad160 takes more or less the same view of a transaction of the kind now before us. Both the learned Judges held that it was only a possessory mortgage and not a lease.

4. In view of these decisions, we hold that the amount which the petitioner was bound to pay under Ex. A is not 'rent' in the proper sense of the term, and does not fall within the mischief; of Section 15 of the Madras Agriculturists Relief Act. The

Civil Revision Petition is dismissed with costs.

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