

Subban Chettiar Vs. Rangan Chetti and ors.

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Court : Chennai

Decided On : Aug-27-1926

Reported in : AIR1927Mad173; (1926)51MLJ706

Appellant : Subban Chettiar

Respondent : Rangan Chetti and ors.

Judgement :

Krishnan, J.

1. This is an appeal against the decree of the Subordinate Judge of Tanjore in O.S. No. 80 of 1921 on his file. The suit was for the redemption of a mortgage in favour of the defendants. The Subordinate Judge dismissed the suit as premature and the plaintiff is the appellant before us. It would seem that the owner of the plaint properties, one Zamindar of Neduvasal, mortgaged the property first to one Oppillamani Chetti and others for a sum of Rs. 11,000. Under that document Oppillamani Chetti was to enjoy the property for a period of 12 years and he Was redeemable in the year 1911, 30th June. In June, 1901 the same Zamindar gave a second mortgage to defendants 1 and 2. The covenant with them was that they should redeem the first mortgagee after its period was over and take possession of the property and enjoy it for a period of 10 years from the 30th June 1911, till 30th June, 1921. The Zamindar again gave a third mortgage of the same property to the plaintiff before us on 16th December, 1910 for a large sum of money. The

plaintiff finding that the defendants did not redeem Oppillamani on the due date himself redeemed Oppillamani and got possession of the properties into his hands on the 30th of August, 1911. Subsequently the defendants tendered the amount due under the first mortgage to the plaintiff as they were entitled to do treating him as one standing in the shoes of the first mortgagee on the, 24th June, 1913. The plaintiff declined to receive the money and be redeemed and declined to give possession of the mortgaged property to the defendants. Thereupon the defendants had the money paid into Court under Section 83 of the Transfer of Property Act and subsequently brought a suit for redemption. Although the plaintiff raised some objections to that suit a decree for redemption was passed against him. Finally, the property was redeemed from his possession on the 21st September, 1914, on which day the defendants seem to have got possession.

2. Now the present suit is by the plaintiff as the third mortgagee to redeem the defendants' second mortgage evidenced by Ex. B. The contention that has prevailed against the plaintiff is that his suit is premature.

3. The way in which the Subordinate Judge has held that his suit is premature is that as it was on account of his obstruction that the defendants Were not able to get possession from the period when they tendered the money to him up to the period when they actually got possession under the suit he was bound to make good that period to the defendants and if you add that to the period of 10 years fixed under the document the time for redemption would come only in August, 1922. He therefore dismissed the suit as premature saying that

as the plaintiff wrongfully persisted in keeping possession himself and in excluding defendants Nos. 1 and 2 thereby securing to himself an undue advantage at the expense of his opponents....I do not think the plaintiff can be permitted to claim the benefit of his own wrongful act to the prejudice of the defendants.

4. That is how he has put the argument; this seems to me to be a wrong view of the matter altogether. Here we have a usufructuary mortgage given to the defendants by the mortgagor for a period fixed from June, 1911 to June, 1921. If any further period is added on to it that will be altering the contract between the parties, a thing which seems to me cannot be done. It will be clear that the

mortgagor himself would be entitled to redeem the defendants after the 10th June, 1911, when the defendants would have no answer to his claim. The question then is whether because the plaintiff in this suit Was responsible for keeping out the defendants 1 and 2 for some time from possession, that period should be added to the period given to the defendants. Now a somewhat similar case arose in Madras in *The Zamindar of Vizianagram v. Behara Suryanarayana Pantulu* 12 MLJ 349 where the defendant had leased to the plaintiff certain villages for a term of 7 years and 8 months. Within a month after the lease was given the plaintiff pleaded to be put in possession of the villages but he never obtained possession. After the period of 7 years and 8 months expired from the date of the lease the plaintiff brought a suit for possession and put forward the argument that as possession had not been given to him and as it was due to the default of the landlord who was in possession he was entitled to claim the period of 7 years and 8 months from the date on which he got possession. That argument was repelled by the Court. The learned Judge pointed out that that would be converting the lease of 7 years and 8 months ending in June, 1911 into one for a period ending in February, 1906. Similarly here if we are to accept the argument of the defendants it would be converting a usufructuary mortgage ending in June, 1921 to one that would be extended to August, 1922. It seems to me that that should not be done. If the defendants have suffered by not getting possession of the mortgaged property on account of the improper obstruction of the plaintiff at any time, their remedy is clearly by claiming damages or mesne profits for that period against him but they are not entitled to have their period of possession extended on that ground. A similar position arose also in an unreported case in S.A. No. 218 of 1896. The Subordinate Judge has relied upon a Bombay case *Hillaya Subbaya v. Narayanappa Timmaya* I.L.R. (1911) B 185. That case does not seem to have any bearing on the present case at all. That was a case of estoppel as between a mortgagor and mortgagee which was extended to a person who had slipped into possession of the mortgaged property by colluding with the mortgagor. He ha3 himself a title as reversion but he was held estopped from putting forward such reversionary right till he gave up possession as he obtained possession of the property by colluding with the mortgagor. That case does not seem to have any bearing on the present case at all.

5. In the view I am taking it must be held that this suit is within time and that the Subordinate Judge's decree must be set aside and the suit remanded to the Lower Court for disposal according to law. The cost of this appeal will abide and follow the result. The Court-fee will be refunded.

Venkatasubba Rao, J.

6. The facts are complicated and I shall briefly set them forth.

7. The Zamindar of Neduvasal is the Mirasdar of the village in question. On the 2nd of April, 1899, he executed a usufructuary mortgage deed in respect of the village (Ex. A) to one Oppillamani Chetti to secure repayment of Rs. 11,000. The mortgagee was to enjoy the property for a period of 12 years ending on the 30th June, 1911. The property could not be redeemed before the expiry of the said term. The date fixed for redemption was the 1st of July, 1911. If it was not redeemed on that date, it was redeemable on the corresponding date of any subsequent year.

8. The next transaction is a transaction of the 29th of June, 1901. The Zamindar executed a second usufructuary mortgage (Ex. B) over the same property in favour of defendants 1 and 2 and their brother Veerappan Chetti. The consideration for this was Rs. 14,000. Out of this Rs. 3,000 was paid in cash to the mortgagor and the balance, namely, Rs. 11,000 was reserved with the mortgagees to be paid to Oppillamani Chetti when his mortgage became redeemable. The bond contains the following clause:

You are to enjoy the properties for a period of 10 years after the expiry of the period fixed for Oppillamani and others. After the expiry of the period fixed for you in this document, we shall redeem the otti after paying the principal amount on the 30th of Ani in any year.

9. On the 16th December, 1910, the plaintiff obtained from the Zamindar two usufructuary mortgages, Exs. C and C-I over the village in question, and certain other villages. These two together may be taken as constituting the third mortgage for the purposes of this appeal.

10. The second mortgagees (mortgagees under Ex. B) failed to redeem the first mortgage on the 1st of July, 1911. The plaintiff, however, paid up the Rs. 11,000 due to Oppillamani Chetti and redeemed his mortgage (Ex. A) on the 30th August, 1911.

11. Defendants 1 and 2 acquired the interest of Veerappan Chetti in February, 1913 and tendered Rs. 11,000 to the plaintiff. The latter refused to accept the sum and deliver up possession of the village to defendants 1 and 2. Thereupon these defendants deposited the amount in Court under Section 83 of the Transfer of Property Act on the 24th of June, 1913. The plaintiff even then refused to receive the sum. Defendants 1 and 2 then instituted on the 7th of July, 1913 a suit against the plaintiff for enforcing their right under Ex. B, obtained a decree and in execution thereof took possession of the village through Court on the 21st of September, 1914.

12. Defendants 1 and 2 assigned their right under Ex. B to defendants 3 to 5. The plaintiff sought to redeem the mortgage evidenced by Ex. B and proceedings taken in July, 1921, under Section 83 having proved to be of no avail, he instituted the present suit in September, 1921.

13. The defendants put forward in the Lower Court two contentions : (1) That they are entitled to be in possession of the property for a period of ten years commencing from the 21st of September, 1914. The learned Judge has not expressed any definite opinion on this point, as he has upheld the second contention of the defendants, to which I shall presently refer. This contention, however, cannot possibly be upheld as it is opposed to the terms of Ex. B which clearly provides that the ten years shall be computed from 1st July, 1911, the date when the mortgage under Ex. A became redeemable. There was nothing to prevent defendants 1 and 2 from redeeming Ex. A and taking possession of the property on the 1st of July, 1911. The delay in redeeming was due to their own fault and they cannot be heard to say that the ten years should be computed from the date of the actual redemption. (2) Their second contention, however, sounds more plausible. They claim that they are entitled in computing the ten years, to exclude the period between the 24th of June, 1913 and the 21st of September,

1914. This, contention has been upheld by the Subordinate Judge and the suit For redemption has been dismissed on the ground that it was premature.

14. The learned Judge in arriving at this decision seems to have been influenced by considerations of equity. His view may be thus expressed. By reason of plaintiff's conduct the defendants were deprived of possession from the 24th of June, 1913 to the 21st of September, 1914. In some manner the plaintiff should be made accountable for this. The plaintiff having been in wrongful possession for about 15 months the defendants may be permitted to add on that period to their own possession. This shortly stated, is the view of the learned Judge.

15. Now, however wrongful the conduct of the plaintiff may have been, there is nothing in law which stands in his way of redeeming the property on the expiry of the term mentioned in Ex. B. The clause reads thus:

After the expiry of the period fixed for you (defendants Nos. 1 and 2) in this document, we (the Zamindar) shall redeem the otti after paying the principal amount on the 30th of Ani in any year.

16. The period fixed expired on the 1st of July, 1921 and the suit was filed in September, 1921. The suit was not therefore premature. The learned Judge moreover overlooked another point. After plaintiff redeemed Ex. A, when he resisted the attempts of defendants 1 and 2 to obtain possession, he was acting in his capacity of the first mortgagee. In the present suit, in seeking to redeem the property, he asserts the right which he possesses as the third mortgagee. That these two rights exist in one and the same individual the plaintiff, is, but a mere accident. To remove the confusion which has crept into the case, let us suppose that Oppillamani's mortgage had never been redeemed by the plaintiff and that the person whose conduct prejudiced defendants 1 and 2 was Oppillamani himself. In that case could the defendants have resisted the plaintiff's suit on the ground that they were kept out of possession by Oppillamani for some time? Again let us suppose that the present suit had been instituted not by the plaintiff but by the mortgagor, the Zamindar. In that case, could the defendants have successfully raised the plea that the mortgagor should be penalised for the wrong committed by the present plaintiff and that his action should be dismissed as being premature?

17. In the previous proceedings, the plaintiff's position was that of the mortgagee; in the present suit, his position is that of the mortgagor. Whatever other remedies the defendants may have against the plaintiff for his wrongful conduct (say recovery of mesne profits or damages), there can be no defence to his present suit for redemption.

18. The appeal must be allowed and I agree in the order made by my learned brother.

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