

Thomas Vs. Victor

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Court : Chennai

Decided On : Sep-19-1975

Reported in : (1976)2MLJ5

Appellant : Thomas

Respondent : Victor

Advocate for Def. : Mr. Padmanabhan

Advocate for Pet/Ap. : Mr. Ganapathi Subramania Iyer

Judgement :

S. Mohan, J.

1. The 8th defendant is the appellant in the second appeal. The short facts are as follows:

2. The father of the plaintiff, Vedamani Nadar was the owner of 28 cents, while the father of defendants 2 and 3 was the owner of another 22 cents. Both of them jointly executed a mortgage deed under Exhibit A-5, dated 10-4-1107 (M.E.) in favour of the first defendant. In Exhibit A-5, it was undertaken to deal with the prior mortgage Exhibit A-1, dated 3-2-1076 (M.E.), which prior mortgage was executed by the predecessors in title of the mortgagor's principal under Exhibit A-5 in favour of one Poruthiyudayan. The mortgagee Poruthiyudayan, died leaving behind 5

sons. On 7-4-1093 (M.E.), under Exhibit A-2, the mortgagor executed a purakadam deed in favour of the 4 sons of Poruthiyudayan. It is only after these transactions that the mortgagors executed Exhibit A-5 directing the redemption of the prior mortgages under Exhibits A-1 and A-2. The first defendant paid 2,400 fanams, towards the discharge of these deeds. Out of the mortgage amounts, the plaintiff's father being the owner of 28 cents, received 1,300 fanams and defendants 2 and 3 together, received 1,200 fanams being the owners of 27 cents. As per the mortgage, the first defendant is in possession and enjoyment of the suit property as mortgagee.

3. While so, Vedamani Nadar, the father of the plaintiff partitioned his property by Exhibit A-7, dated 5th October, 1933, by which the 28 cents fell to the share of the plaintiff. By the deeds dated 6-10-1105 and 23-2-1109 (M.E.) the mortgage dated 3-2-1066 (M.E.), is acknowledged and hence the mortgage is not barred by limitation. Under these circumstances, the suit is filed for redemption.

4. In the written statement of the first defendant, it is contended that the mortgage deed recites to redeem the prior mortgages Exhibits A-1 and A-2. The first defendant has redeemed from only 2 of the 5 sons. Therefore, the other three sons of the original mortgage ought to have been impleaded. In any event, without paying the mortgage, there cannot be any redemption by the plaintiff.

5. On similar lines, the other defendants also filed written statements, It was mainly contended that the rights of redemption had become barred.

6. The learned trial Munsif, on a consideration of the oral and documentary evidence passed a preliminary decree for redemption. On appeal, in A.S. No. 244 of 1958, the said finding of the trial Court, was confirmed by the learned District Judge of Kanyakumari, Hence, the present second appeal.

7. The only point that arises for my determination is, as to whether the suit is barred by limitation.

8. Mr. Ganapathi Subramania Iyer, learned Counsel for the appellant, strenuously contends before me that upon the execution of the purakadam, Section 20 of the

Travancore Regulation VI of 1100 (M.E.) gets attracted, as a result of which the limitation of 50 years will have to be computed from the date of the purakadam. In 1951 the Part-B States (Laws) Act, 1951 came into force and extended the Indian Limitation Act, 1908, to Travancore, the result of which would be that within two years since the coming into force of Part-B States (Laws) Act, 1951, the suit ought to have been filed. In so far as it has not been done, the present suit for redemption is barred. In support of this submission the learned Counsel relied on *Syed Yousuf v. Syed Mohammed* : [1967]2SCR318 .

9. These submissions are countered by Mr. Section Padmanabhan by contending as follows: (a) the recitals of Exhibit A-2 are to the effect that the mortgage's possession will be on the basis of Exhibit A-2, Such being the position, it was not open to the mortgagor to redeem the mortgage piecemeal. Therefore even without reference to the Travancore-Cochin Limitation Act, if the period of 50 years of limitation is reckoned from Exhibit A-1 of the year 1076 (M.E.) (1918), it is well open to the mortgagors to redeem the property. (b) Though the provisions of the Transfer of Property Act were not made applicable directly to Travancore-Cochin, the principles adumbrated, therein were made applicable to Travancore-Cochin. One such provision was Section 61, as it stood prior to the Amending Act II on 1929, under which the mortgagor was in duty bound to consolidate all the mortgages. If, therefore, a separate redemption of Exhibit A-1 was not possible, it cannot be contended that the right of redemption had become barred, (c) In any event before the expiry of the period of limitation, the new Limitation Act of 1963 had come into force, and therefore, it cannot be contended that the suit ought to have been filed within 2 years after the passing of Part-B States (Laws) Act, 1951. In support of these submissions, the learned Counsel relies on *Nackappa Goundan v. Samiappa Gotindan* (1946) 2 M.L.J. 358 : 230 Ind.Cas. 387 : A.I.R. 1947 Mad. 18, *Bhaskaran Moothathu v, Agnisaramaju Namboori* (1946) T.L.R. 546, *Pakavathi Neelakantan v. Ummuni Pillai* (1952) K.L.T. 129 : A.I.R. 1952 T.C. 295 and *Mohammed Akbar Khan v. Mussamat Motai* .

10. In reply, Mr. Ganapathi Subramania Iyer, learned Counsel for the appellant says that the execution of purakadam does not give an extended period of limitation and once limitation started running it cannot be arrested.

11. Undoubtedly, by the execution of purakadam under Exhibit A-2, Section 20 of Travancore Regulation No. VI of 1100 Will be applicable. That categorically states that the period of limitation has to be reckoned from the date of such purakadam and the said period is 50 years. On 1st April, the Part-B States (Laws) Act of 1951 came into force and extended the Limitation Act, 1908, to Travancore-Cochin. The result was that the Travancore Regulation VI of 1100 stood repealed by Section 30 of the Indian Act. On this basis, it is contended that there is no period of limitation prescribed for a purakadam under the Indian Limitation Act of 1908, and consequently, the suit ought have been filed within 2 years viz., by 1953. Therefore, the present suit filed in 1966 is hopelessly barred by limitation : In advancing this contention, the following passage in Syed Yousuf v. Syed Mohammed : [1967]2SCR318 is pressed into service:

Ex facie, Section 30 applied to a suit for which the period of limitation prescribed by the Indian Limitation Act, 1908 is shorter than the period of limitation prescribed by the corresponding law in force in the Part B State. Now, the Hyderabad Limitation Act did not apply to a suit for recovery of possession of a wakf property. The result was that under the corresponding law in force in Hyderabad, there was no limitation for such a suit. In other words, the period of limitation prescribed for the suit by the corresponding law in Hyderabad was an unlimited period. Article 142 of the Indian Limitation Act, 1908 applied to a suit for recovery of possession of the wakf property. As it prescribes a shorter period of limitation for the institution of the suit, Section 30 enabled the plaintiffs to institute the suit within a period of two years after 1st April, 1951. The Part B States (Laws) Act, 1951 while extending the Indian Limitation Act, 1908 to Hyderabad thus allowed the plaintiffs reasonable time to institute the suit for recovery of the property. The extension of the Indian Limitation Act, 1908 to Hyderabad and the consequential change in law prescribing a shorter period limitation did not confiscate the existing cause of action and must be regarded as an alteration in the law of procedure for its enforcement. We must, therefore, apply the normal rules that the law of limitation applicable to the suit is the law in force at the date of the institution of the suit. The suit is, therefore, governed by the Indian Limitation Act, 1908.

12. Though these observations seem to support the contention of the learned Counsel for the appellant, to a great extent, in making these submissions, he ignores the recitals occurring in Exhibit A-2, since thereunder it is stated that the possession under the mortgage deed shall be on the basis of Exhibit A-2 also. Under these circumstances, the mortgagors ought to consolidate both the mortgages and redeem Exhibit A-1 and A-2 together and piecemeal redemption was impossible as per the law under the Transfer of Property Act that stood prior to the Amending Act II of 1929. This right of consolidation was not a mere right to have the advantage of an existing statute, but it was a vested right in the property. This is the dictum laid down in *Nachappa Goundan v. Samiappa Goundan* : AIR1947 Mad18 .

13. No doubt, the Transfer of Property Act as such did not apply to Travancore-Cochin, then. But the principles enunciated therein were made applicable. It was held in *Bhaskaran Moothathu v. Agnisaramam Namboori* (1946) T.L.R. 546, that all the mortgages over the same property in favour of one and the same person must be simultaneously redeemed. It was further held that the right of redemption involves the obligation to discharge all the debts due to the particular creditor, as against whom redemption is sought.

14. Again in *Pakavathi Neelakantan v. Ummini Pillai* (1952) K.L.T. 129 : A.I.R. 1952 T.C. 295, it was held:

Notwithstanding the fact that the Transfer of Property Act was not law in Travancore and Cochin before its introduction there, the principle which Section 61 (before its amendment in 1929) impliedly recognised was applicable to Travancore and Cochin and all the mortgages over the same property in favour of one and the same person must be simultaneously redeemed, and the mortgagor is not entitled to redeem one without redeeming the other or others.

15. The above rulings full support the stand of Mr. Padmanabhan, learned Counsel for the respondent.

16. *Lala Soni Ram v. Kanhaiya Lal* (1913) 40 I.A. 74 : I.L.R. 35 All. 227, was a case wherein the question arose whether by reason of acknowledgment by deeds

of 1866 and 1867, the limitation could be extended. It was held that it was not so extended, since those acknowledgments were not made by a person through whom the defendants claimed title and therefore, the statutory time continued to run during the period between 1883 and 1898. This case is clearly distinguishable.

17. To my mind, it appears that the recitals in Exhibit A-2, to which I have made a reference earlier, are of great consequence and of immense value in deciding the point of limitation. The fallacy in the argument of Mr. Ganapathi Subramania Iyer is, that he wants to reckon the 50 year period of limitation from the date of the purakadam, Exhibit A-2 without reference to the recitals contained therein.

18. Thus, I am in entire agreement with the findings of the Courts below. Consequently, I hold that there are no merits in the second appeal and the same shall stand dismissed. In the circumstances, of the case, I make no orders as to costs. No leave.

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