

Kottayan Asari and anr. Vs. Gopalan Alias Andi Asari and anr.

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Court : Chennai

Decided On : Jan-28-1977

Reported in : (1977)2MLJ310

Appellant : Kottayan Asari and anr.

Respondent : Gopalan Alias Andi Asari and anr.

Judgement :

M.M. Ismail, J.

1. The defendants in O.S. No. 393 of 1970 on the file of the Court of the District Munsif of Melur, who lost before the Courts below, are the appellants herein. The suit items are two in number, which admittedly belonged to one Periakaruppan Asari, who died leaving behind his widow Chinnammal and mother Meenakshi. The said Meenakshi Ammal and Chinnamma executed an othi in respect of these items in favour of ore Alagayi Ammal under the original of Exhibit A-3 dated 10th November, 1937. Meenakshi Ammal died and the appellants herein are said to be the sons of Alagayi Ammal and therefore the successors-in-interest of the mortgagee Chinnammal under Exhibit A-1, dated 24th May, 1970 settled the first item of the suit property in favour of the second plaintiff. Under Exhibit A-2 dated 29th June, 1970 she sold the second item in favour of the first plaintiff. Both the plaintiffs, who are husband and wife, joined together and instituted the present suit for redemption of the othi and for recovery of possession of the property. Several

defences were put forward by the appellants herein. The trial Court decreed the suit, but provided, that with regard to item 2, the first plaintiff was to work out his right to possession separately and with regard to item 1, it held that since the mortgage was ab initia void, the question of redemption did not arise. Against this judgment of the trial Court, the appellants preferred an appeal and the respondents filed a memorandum of cross-objections. The learned I Additional Subordinate Judge of Madurai dismissed the appeal preferred by the appellants and allowed the memorandum of cross-objections preferred by the respondents. The result was that the suit was decreed as prayed for. It is this decree that is being challenged in the present second appeal by the defendants in the suit.

2. With regard to the first item of the suit property, the learned Counsel for the appellants contended that it was conceded by both the parties that the same was kollsthachu manyam that therefore under Section 5 of the Madras Hereditary Village Offices Act, 1895, the usufructuary mortgage was void ab initio and that in any event the respondents should have proceeded only under Section 13 of the Madras Hereditary Village Offices Act, 1895, that under Section 13 read with Section 14 of that Act, Chinnammal should have taken proceedings before the Collector for recovery of possession of the property within 3 years, that she not having taken any such proceedings, her right became barred and that therefore, she could not have executed Exhibit A-1 and A-2 in favour of the respondents herein. With regard to item 2, the contention is that the same is covered by Tamil Nadu Act XXVI of 1963, that under that Act patta has been issued to the appellants herein and that therefore the respondents will not be entitled to any relief in that behalf. I may point out in this context that the learned Counsel for the appellants avowedly did not claim that the appellants had acquired title to the suit properties by adverse possession and all that he repeatedly contended was that the usufructuary mortgage being void ab initio, the mortgagor Chinnammal should have proceeded only under Section 13 of the Madras Act 117 of 1895, that once she had not proceeded under that Act within a period of three years as provided for under Section 14 of that Act, her right became barred and that she had no right to settle or sell the suit properties as she purports to have done in 1970.

3. I am of the opinion that this argument is misconceived and has no substance. I may point out in this context that the Madras Act III of 1895 has been repealed by the Tamil Nadu Act XX of 1968 and therefore on the date of Exhibits A-1 and A-2 Section 5 of Madras Act III of 1895 was not in operation and consequently if Chinnammal had title to the suit properties, she was competent to settle item 1 in favour of the second plaintiff and alienate item 2 in favour of the first plaintiff. Therefore there is no substance in the contention that Chinnammal had no right to deal with the properties, as she had done under Exhibit A-1 and A-2.

4. The other question that remains to be considered is, whether the contention of the learned Counsel for the appellants that Chinnammal should have taken proceedings under Section 13 of Act III of 1895 within a period of three years and that she not having taken any proceedings under that section, she could not have filed the present suit, is sound or not. Section 13(1) of that Act provided that any person may sue before the Collector for any of the village offices specified in Section 3 or for recovery of the emoluments of any such office, on the ground that he is entitled under Sub-section (2) or (3) of Section 10 of the Madras Proprietary Estates' Village Services Act, 1894, or under Sub-section (2), or (3) of Section 10 or Sub-section (2) or (3) of Section 11 or Section 12 of this Act, as the case may be, to hold such office and enjoy such emoluments, or, being a minor, may sue before the collector to be registered as heir of the last holder of any such office. I am of the opinion that that section will apply only to a case where a person entitled to the offices mentioned in the Act sues for recovery of the office or for emoluments on the basis that he was entitled to hold the offices mentioned in the section and that section has no application whatever to a simple suit for redemption of a mortgage and for recovery of possession of the properties. Consequently Section 13(1) is no bar to the respondents herein filing the present suit.

5. I gave an opportunity to the learned Counsel for the appellants to produce any authority of this Court to show that a suit of this nature will fall within the scope of Section 13(1). Though the learned Counsel referred to several decisions, none of them was relevant to the point in controversy and therefore I have to proceed only on the basis of the language contained in Section 13(1). If it is so done, Section

13(1) can have no application whatever to a suit of this nature. Consequently the respondents herein were entitled to a decree for redemption in respect of both the items of properties in question.

6. The only other question that remains for consideration is, whether the respondents can recover possession of the suit properties in the present suit itself. I am of the opinion that having regard to the fact that the two items are covered by the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari Act), (XX of 1963) and the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act (XXX of 1963), the respondents will have to work out their right to recover possession of the suit properties by taking proceedings under those Acts. It is represented to me that under Exhibit B-1 patta has been granted to the appellants in respect of item 1 and that in respect of item 2, notice has been issued under Exhibit B-3 dated 15th December, 1960. That only means, the proceedings for the issue of patta have not become final under the provisions of the Acts referred to above, and therefore the respondents can work out their right to recover possession of the suit items under the Act, as held by Ramanujan, J., Kuttachi and two Ors. v. Mohamed Sultan Rowther and Anr. S.A. No. 1167 of 1967 dated, 6th January, 1972.

7. In the result, the second appeal is allowed in part to the extent to which the learned Subordinate Judge granted a decree for possession also in favour of the respondents. In other respects, the judgment and decree of the learned Subordinate Judge are confirmed. There will be no order as to costs. No leave.