S.M.A. Abdul Rasheed Vs. A.M.A. Abdul Batcha and ors.

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Court : Chennai

Decided On : Apr-27-1979

Reported in : (1979)2MLJ341

Appellant : S.M.A. Abdul Rasheed

Respondent : A.M.A. Abdul Batcha and ors.

Advocate for Pet/Ap. : Mr. Venkataraman

Judgement :
ORDER

T. Sathiadev, J.

1. This appeal is preferred against the order made in C.M.A. No. 62 of 1976 by the District Court, East Thanjavur, which in turn confirmed the order made by the District Munsif, Tiruvarur in I.A. No. 1700 of 1974 in O.S. No. 291 of 1961. LA. No. 1700 of 1974 was filed under Section 19 of Tamil Nadu Act IV of 1938, as amended by Act VIII of 1973, to scale down the decree amount and amend the decree in O.S. No. 291 of 1961, as fully satisfied. It was claimed by the petitioners that they are agriculturists entitled to the benefit of the said Act and that their father, who is since dead, had mortgaged the property described in the plaint and obtained a lease-back arrangement by which he had agreed to pay the rent of Rs. 35 per month and continued, to be in possession of the suit property as a. tenant. Abdul Hajid Rowther, who is the predecessor-in-interest of the appellant herein

who was the second petitioner in the petition, usufructuarily mortgaged the suit property in favour of one Syed Bivi Ammnl on 1st January, 1943, and later on both the parties had died. During the subsistence of the mortgage, there was a lease-back arrangement of the mortgaged property, in and by which the mortgagor had agreed to pay a monthly rent of Rs. 35 and continued to be in possession of the suit property as a tenant. Since the mortgagor did not pay the rents, proceedings were instituted in the Rent Control Courts for evicting the tenants. Later on, a suit in O.S. No. 291 of 1961 was filed in the District Munsif's Court, Tiruvarur, for realisation of the rents due, and it was decreed. The matter was taken up on appeal and further in Second Appeal No. 785 of 1965 by the aggrieved mortgagors and ultimately the appeal failed and it was dismissed. During the pendency of the proceedings in this Court, C.R.P. No. 603 of 1955 was filed as against the R. C. O. P. proceedings taken against the mortgagors. An order was passed on 10th August, 1955 directing the petitioners before it to deposit into the Court all arrears of rent due from March, 1951 onwards upto 10th August, 1955, within three months from that date, and that the future rents should be regularly paid, for which they should furnish security to the satisfaction of the Court. Accordingly they gave security. It is to realise the amount covered by the security that O.S. No. 291 of 1961 was filed, and as stated above, the second appeal preferred in S.A. No. 785 of 1965 was also dismissed. It is after the passing of the amended Act VIII of 1973, that the present application has been filed to wipe out the amount covered by the decree on the basis that it was nothing but interest' which had accused before 1st March, 1972 even though the amount was paid as rent.

2. The respondents herein contended that it is true that there was a mortgage in favour of Syed Bivi Ammal in 1943 and the suit was filed by the mortgagee to realise the mortgage amount and the amount covered by the decree in O.S. No. 291 of 1961 being the security, it cannot be scaled down by invoking Section 9-A (9)(a)(i) of the Act at this stage, when the mortgagor has not filed a suit for redemption. It was further claimed that there being no mortgage in existence as on date, the entire decree amount cannot be wiped out and the contention that even though the amount payable was covered by a rent deed, in fact, it is only interest, and therefore, it is liable to be scaled down, cannot be entertained because the

mortgage transaction was completed as early as 1961.

3. The District Munsif, Tiruvarur, held on the basis of Exhibit A-1, which is a certified copy of the registered rent deed executed by the father of the petitioners in favour of the mortgagee Syed Bivi Ammal, that the amount covered by the decree is in the form of a security bond for Rs. 1,600 and the mortgaged property having been redeemed, the decree which is now in existence, has nothing to do with the mortgage and it having been held that Section 9-A is a Code by itself, there can be no question of construing the amount covered by the decree as interest which would lead to the entire amount being wiped out because of Act VIII of 1973. It therefore held that the respondents before it would not be entitled to any interest over the amount decreed before 1st March, 1972 and that the principal amount of Rs. 1,600 with interest at 51/2% per annum from 1st March, 1972 is realisable. On appeal, this decision was confirmed by holding that Section 9-A being a Code by itself, there could be no question of construing the rent' payable under the lease-back arrangement, as 'interest'.

4. Counsel for the appellant contends that, after the passing of Act VIII of 1973, under Section 19 (1) of the Act, the appellant is entitled to derive the benefits for amending the decree by invoking the provisions of the Act, which in turn would result in taking the benefits under Section 9-A (9)(a)(i) of the Act. He claims that the amount which became payable under the decree, even though called 'rent', in essence it was nothing but 'interest' and, therefore, after the passing of Act VIII of 1973, all the interest payable under the mortgage, preceding 1st March, 1972 deserve to be wiped out, and since the decree is still subsisting, the appellant is entitled to ask for amendment of the decree under Section 19(1) of the Act, as it stands now.

5. This contention is opposed by the counsel for the respondent Mr. Ram Mohan on the grounds that: (1) the mortgage is not existing as on date to invoke Section 9-A (9)(a)(i)(hereinafter to be referred to as such section'); (2) what is now being enforced, is the security bond that was given in C.R.P. No. 603 of 1955 and not the rental amount; (3) even assuming that it is 'rent', since the relationship between the parties in respect of the amounts now realised was one of 'landlord'

and 'tenant' covered by Exhibit A-1, the rental deed, it can never be construed as 'interest' payable under the mortgage; (4) the mortgagor having not filed a suit for redemption, be cannot invoke Section 9-A of the Act since this Court has, in more than one decision, held that it is a code by itself, and in the present proceedings, after the mortgage has been extinguished, the said sub-section cannot be invoked.

6. It is not in dispute that the appellant is an agriculturist within the scope of Tamil Nadu Act IV of 1938. Equally it is not in dispute that 'the decree was obtained after the mortgaged property was redeemed on the security bond executed by the petitioners for rent due'. This happened in 1961 subsequent to the mortgagee filing a suit for the mortgage amount. Therefore even on the date when O.S. No. 291 of 1961 was decreed, the mortgage had ceased to exist. O.S. No. 291 of 1961 was filed only for the rental amount due based on Exhibit A-1, certified copy of the registered rent deed for the period during which the mortgagors were in possession of the property and answerable to the mortgagee. Hence it has to be held in favour of the respondents herein that when the present application was filed under Section 19 of the Act, the mortgage transaction dated 1st January, 1943, was not subsisting.

7. The second objection taken is that what is now sought to be enforced is only the security and not the rental amount covered by 'the decree. For this Mr. Ram Mohan, relies upon the decision rendered in Kamakshi Ammal v. Pappathi alias Kamalambal : AIR1976 Mad292 which arose under Tamil Nadu Cultivating Tenants Protection (Amendment) Act in which the question arose as to what could be the character of the amount deposited in Court as arrears of rent and whether it could be construed as outstanding within the meaning of Section 3 of the Act. It was held therein, that when

The Legislature has designedly used the expression 'outstanding (in Section 3), it means that if the tenant had already paid in full or in part the rent payable, he had no right to seek for recovery of it from the landlord.... In the instant case, the amount in Court deposit could not be said to be arrears of rent or an outstanding rent. It had lost the impress of rent because of the peculiar situation when the money came to Court pursuant to orders of Court, in an application for stay of the

execution of a money decree. Taking all these factors into consideration, I am of the view that the petitioners are entitled to the amount in Court deposit and not the respondents.

Since the Court had directed that arrears of rent be deposited into Court, it has been held that

after such a payment has been made, it cannot still be treated as an outstanding amount.

Relying upon the observation made therein that because of fee peculiar situation, when the money comes into Court pursuant to orders of Court in an application for stay, it loses the impress of rent, it is contended that, in this case, when the security bond was executed pursuant to the orders in C.R.P. No. 603 of 1955, the respondents are no longer claiming any rent or interest, and hence the sub-section cannot be invoked. He also relies upon the decision in Upagara Marie Andire v. Samraj (1978) 2 M.L.J. 517 : 91 L.W. 476 to the effect, that in a case where the promissory note is executed which represents the recovery of the balance of the amount payable for the sale, the true nature of the transaction, is to be based only on the promissory note and the suit can be filed as such, and there is no question of treating the transaction as one for recovery of balance of consideration. In short, his contention is that there is no Heed to find out the origin of the transaction, but what is being enforced immediately is alone relevant for consideration.

8. Mr. Venkataraman, counsel for the appellant contends that but -for the mortgage transaction, dated 1st January, 1943, Exhibit A-1, the rental deed would not have come into existence and the rental deed itself had been entered into as a lease back arrangement by the mortgagee in favour of the mortgagor and the rental amount cannot be none other than 'interest' payable to the mortgagee and therefore the sub-section would be attracted and hence relief can be claimed after 1st March, 1972. For this purpose, he refers to the decision in Somu Achari v. Singara Achari : AIR1945 Mad407 to show that in a case where there is a charge of the unpaid vendor for which a promissory note comes into existence, still the charge cannot be put an end to and the filing of a suit on the promissory note and obtaining a decree thereon, will be concerned only to the realisation of the amount

covered by that promissory note. In this contest it will be useful to refer to the order passed in S.A. No. 785 of 1965 wherein it has been stated that

the appellant herein is to deposit into Court all arrears of rent due from March, 1951 onwards upto date, that is, 10th August, 1955 within three months from that date, that is, on or before 10th October, 1955 and should pay regularly future rent or in the alternative the defendants should furnish security to the satisfaction of this Court for all arrears of rent upto date.

Accordingly the appellants herein gave security. On the failure of the appellants to pay the rent, the respondents instituted a suit on the security for realising the amount of rent due to them. Both the Courts have decreed the suit.

Therefore what was offered as security was in lieu of the 'rent' payable as per Exhibit A-1. No doubt in the second appeal, it was contended that the proper course would have been to file only a suit for recovery of rent and not on the basis of security and it was held that there is no illegality in the suit having been framed on the security. Even though Mr. Ram Mohan would contend that the Court having held that a suit can be filed on the basis of the security, it cannot bear the impress of rent, in view of the extract above referred to it is quite obvious that the amount that was decreed was nothing but the arrears of rent claimed by the party. The decision reported in Kamashi Ammal v. Papathi (alias) Kamatambal : AIR1976 Mad292 was more concerned with the meaning that should be given to the word outstanding' in Tamil Nadu Act XXI of 1972, As observed therein, in the peculiar situation, when the money had come into Court, it could not still bear the same impress of 'the rent' due. Therefore it cannot be said that what was claimed in O.S. No. 291 of 1961 was not rent but was only for enforcement of the security bond furnished during the pendency of the civil revision petition. The nature of claim bad continued to remain the same and this has also been recognised in the decision rendered in S.A. No. 285 of 1961, and therefore it has to be held that what was decreed was nothing but 'rent' payable by the mortgagor-tenant in favour of the mortgagee landlord.

9. Mr. Venkataraman, counsel for the appellant contended that since the amount covered by the decree is nothing but arrears of rent, straightaway the sub-section

gets applied and by virtue of the recent amendment in Act VIII of 1973, the entire interest prior to 1st March, 1972 being wiped out, the decree amount cannot be realised 'from the appellant. The Sub-section (9)(a)(i) of the Act existed even before 1972 and the point as to whether the rent paid under a lease back arrangement by the mortgagor will be interest or only rent had come up for consideration before this Court even as early as 1952, and it was decided in Kalyanasundaram v. Chockalingam : AIR1952 Mad293 that:

the Explanation to Section 9-A (1)(b) and Sub-section (9)(a)(1) introduces a fiction for the purpose of scaling down the mortgage debt. Under the explanation the mortgagee, though he leased back the mortgaged property, is deemed to be in possession. Under Sub-section (9)(a)(i) the rent payable by the mortgagor shall be deemed to be the interest on the mortgage debt. Sub-section (9)(a) does not expressly or by necessary implication indicate that a lease back is invalid. Indeed some of the provisions show that the lease is valid and continues to be in force.... The scheme of the section leaves no doubt in my mind that it is intended only to apply when the mortgagor seeks to redeem the mortgage. As the lease has not been declared to be, invalid, if the mortgagor does not apply for redemption there is nothing in the provisions of this section or in the Act which precludes a mortgagee from filing a suit 'for recovery of the rents legally due to him under the lease deed. It is no doubt true that the mortgagor can anticipate such a suit and take necessary proceedings for redemption. So long as the mortgagor does not take any such step, the pre-existing rights of parties are intact. In this view-I agree with the Court below that the mortgagee will be entitled to a decree for the entire rent due to him under the lease deed.

This view was 'followed in Gopal Chettiar v. Arumugha Naicker : (1962)1MLJ4 wherein it was held that:

'Interest' as defined in Section 3(iii) of the Madras Agriculturists' Relief Act, is a part of the obligation under the debt.... Payments in discharge of obligations arising under different' transactions or contract could not come within the scope of interest as defined. Section 9-A (a)(i) of the Act provides specially for cases of leaseback in favour of the mortgagor by the usufructuary mortgagee where the

rent due will be deemed to be interest on the mortgage. Payment of rent in such cases will not, except under the deeming provision in Section 9-A, tantamount to interest and cannot be scaled down under Section 13 of the Act.

Again in Nataraja Iyer v. Subbiah Ambalam : (1962)1MLJ397 it was held that:

In a suit by the mortgagee to enforce such a mortgage, the mortgagor could not invoke Section 9-A of Madras Act IV of 1938, which is intended to apply only when the mortgagor seeks to redeem the mortgage.

The Division Bench of this Court in Visalakshi Achi v. Nayslagu (1955) 68 L.W. 630 while dealing with a case arising under the lease-back to the mortgagor and the claim being in respect of arrears of rent, held that:

the provisions of Section 9(A)(9)(a) for scaling down would be available to a mortgagor-lessee only in cases where he files a suit for redemption, and this apart, the provision is inapplicable to cases where a mortgagee files a suit for the recovery of the rent stipulated under the lease back.

It has been held therein that:

Section 9-A (9)(a)(i) is not an independent provision but in the context and setting, in which it appears, is designed for the determination of the amount payable on redemption. The lessor will, therefore, be entitled to a decree in that suit for rent, for the full amount of the rent stipulated by the parties under the contract on the ground that the present suit. not being one for redemption the scaling down provision would not apply.

In. Muthuswamy Odayar v. Savarimuthu Odayar : AIR1963 Mad249 the Full Bench has held that 'the provisions of Section 9-A of the Act can be invoked only at the time of the redemption of the mortgage, and that no doubt the subsection deems rent due as interest, but it cannot mean that the rents that had been already paid should also be deemed to be interest. The word 'due' would mean 'still remains unpaid' and there being nothing in the statute to extend its meaning so as to include really what is not due, the fiction will come into play only when the claim is for redemption'. Therefore it is quite obvious that whenever there is a

lease-back arrangement and a certain amount of rent becomes payable, it has to be worked out as an independent transaction based on the lease deed or lease arrangement. The lessee claiming to be an agriculturist may seek relief under amended Act VIII of 1973, for wiping out the interest payable under the decree preceding 1st March, 1972. But he cannot ask for the wiping out of the liability to pay the lease amount covered by the suit. This Court had been taking the consistent view, as pointed out above, that Section 9-A of the Act is a Code by itself, and that it can be invoked by a mortgagor only if he files a suit for redemption. In this case, the mortgagor-lessee had not filed any suit for redemption. The rent payable by him under ' Exhibit A-1 can be deemed to be interest by the fiction contemplated under the sub-section if only he can invoke Section 9-A of the Act. He being a mortgagor, the decisions above referred to, preclude him from invoking the sub-section, since he had not filed any suit for redemption. This is not a case where subsequent to Act VIII of 1973, a mortgage decree obtained by a mortgagee, is sought to be amended by invoking Section 19 of the Act. When he does not have the legal right to invoke Section 9-A, he cannot take advantage of the fiction contemplated under the sub-section, merely because the claim is nothing but rent that became payable by the mortgagor on a lease-back arrangement to the mortgagee during the subsistence of a mortgage. This Court in the decisions above referred to, has held that it has to be treated as a separate transaction, and so long as the lease is not held to be invalid, the mortgagor-lessee is bound to satisfy such decrees, unless he comes by way of redemption. In this case, the mortgage transaction had come to an end by 1961, and the decree in O.S. No. 291 of 1961 had been obtained, subsequently, representing nothing but the rental amount covered by an independent transaction under Exhibit A-1 and therefore the appellant herein cannot claim that the decree amount is only interest payable under the mortgage and covered by the fiction contemplated under the sub-section.

10. On the 4th point, I have already referred to the binding decisions of this Court, wherein it has been held that Section 9-A of the Act is a Code by itself and it can only be taken advantage of under the circumstances contemplated therein. Counsel for the appellant refers me to the decision rendered in Easoop v. Rookutty Umma : AIR1956 Mad259 in which the point arose as to whether an

application under Section 19-A of the Madras Agriculturists' Relief Act', 1938, to scale down a mortgage debt as per the provisions of Section 9-A of that Act, is maintainable, and to get the necessary declaration and it was held that Section 19-A of the Act cannot be controlled by Section 9-A, since it does not contain any overriding or self-contained provision which can inhibit the procedure contemplated under Section 19-A of the Act being enforced. The Court had the occasion to consider the earlier decisions rendered in Srinivasaraghava Ayyangar v. Narasihnha Mudaliar : AIR1952 Mad292 Sankara Ayyer v. Yagappan Servai : (1940)2MLJ874 and Venkatanarayana Rao v. C. Savansukha : AIR1954 Mad896 and held that such decisions will not be of any relevance for considering the question as to whether Section 19-A of the Act can be controlled by Section 9-A of the Act. It was further held therein that any further remedy which the mortgagor might claim as and by way of recovery of possession or otherwise, could be had only in a suit and not in a proceeding under Section 19-A of the Act but by the other modes open to him under law. He also relied upon the decision of this Court in Karuppan Chettiar v. Vaithyanathan (1955) 2 M.L.J. 30: (1955) 68 L.W. 477 wherein a division bench of this Court considered the scope of sections 9-A and 19-A of the Act and held that the procedure prescribed in Section 19-A of the Act is not in any way controlled by Section 9-A of the Act.

11. Based on the reasonings adopted in these decisions, the counsel for the appellant contends that it will equally apply in respect of Section 19 (i) which contemplates amendment of decrees. It will be seen that such a relief will be available by applying the provisions of the Act to decrees passed. Therefore 'if the provisions of the Act are to be applied' then it will necessitate invoking the sub-section. It is not in dispute that the appellant is an agriculturist. I have already held that the amount to be recovered from him is the rental amount payable under the Rent Deed Exhibit A-1. There is no scope for deeming such rents as 'interest' because the amount due is. covered by an independent transaction which, has no relationship with the mortgage transaction. On the date when he files the application under Section 19 of the Act, he is not in the position of a mortgagor. If it has to be contended that in the period during which the amount was payable, he was in the position of a mortgagor, there again, it will be seen that this Court had taken the view that the one and the only occasion when he can invoke the sub-

section will be, when he comes by way of redemption suit. Therefore not only because the amount that is decreed is covered by a separate transaction, but on the date when he filed the application or even on the date when the decree was obtained against him, he was not a mortgagor and Section 9-A of the Act can become applicable only when there is an usufructuary mortgage and it is because of the special provisions contained therein, this Court in a catena of decisions, had held that Section 9-A being a Code by itself, any relief claimed therein by a mortgagor can be secured only in a suit for redemption filed by him and appellant can get the relief as prayed for.

12. The amount covered by the decree being only rental amount covered by Exhibit A-1 which is an independent transaction, the appellant cannot seek the benefits under Section 9-A (a)(i), of: Act IV of 1938 as amended by Act VIII of 1973. As held by the Courts, below, interest payable on the decree debt upto 1st March, 1972 alone will be scaled down and in this view, the appeal fails and it stands dismissed. No costs.