
(1993) 07 MAD CK 0048

Madras High Court

Case No: None

Jeevendra Nainar

APPELLANT

Vs

Smt. Kanakammal and
Others

RESPONDENT

Date of Decision: July 5, 1993

Citation: (1994) 1 MLJ 118

Hon'ble Judges: Janarthanam, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Janarthanam, J.

The petitioner Jeevendra Nainar, it is said, borrowed a sum of Rs. 3,000 from the first respondent, Srimathi Kanakammal, wife of Krishnaji Reddiar on 21.7.1966 and executed a mortgage in her favour by mortgaging certain items of his landed properties. The first respondent appeared to have filed a suit in O.S. No. 1715 of 1981 on the file of the District Munsif, Tindivanam on the said mortgage and obtained a decree therefor.

2. The petitioner appeared to have filed an application u/s 6 of the Tamil Nadu Debt Relief Act, 1980 (Tamil Nadu Act 13 of 1980, for short "the Act") before the second respondent the Special Tahsildar, Debt Relief, Tindivanam, praying for release of the mortgaged properties. The second respondent dismissed the said application. Consequently, aggrieved by the order of the second respondent, the petitioner preferred an appeal to the third respondent, the Sub-Collector, Tindivanam u/s 8 of the Act, who in turn on consideration of the materials available on record also dismissed the appeal concurrent with the view of the second respondent.

3. The aggrieved petitioner resorted to the present action, praying for issue of a writ of certiorari to quash the order of the third respondent confirming the order of the second respondent.

4. Arguments of learned Counsel for the parties were heard.

5. During the course of arguments, learned Counsel for the petitioner himself drew my attention to the decision of the Division Bench of this Court in the case of [R. Annamalai Vs. Pappathi and Another](#), and stated that as per the ruling of the said decision, once the civil court passed a decree, it is not permissible for the authorities under the Act to have the power to give a certificate of redemption and if so allowed, it would tantamount to giving power to the Tahsildar to nullify a decree passed by the civil court when especially the Legislature has not enacted any express provision to interfere with the decree passed by the civil court but it is however permissible for the civil court to consider the question as to whether the debtor is entitled to the benefits of the Act, even at the stage of execution proceedings. Learned Counsel appearing for the respondents have no other go, except to bow their heads in reverence to the decision of the Division Bench as referred to by learned Counsel for the petitioner. It is, however, made clear that it is open to the petitioner to claim the benefits of the Act at the time when the execution is sought to be resorted to by the petitioner by filing the necessary application therefore in the competent forum and if such a question is raised, it is for the civil court to consider the same and give a finding thereon.

6. Hence on the face of the Division Bench ruling, it goes without saying that the writ petition as such, deserves to be dismissed and the same is accordingly dismissed. Rule Nisi issued shall stand discharged. There will be no order as to costs, in the circumstances of the case.