

Sanku Chandrasekharan and Another Vs Revenue Divisional Officer and Others

Court: High Court Of Kerala

Date of Decision: March 1, 1996

Acts Referred: Constitution of India, 1950 " Article 226
 Kerala Debt Relief Act, 1977 " Section 2(3), 2(4), 3, 4

Hon'ble Judges: K.T. Thomas, Acting C.J.; S. Sankarasubban, J

Bench: Division Bench

Advocate: S.V. Balakrishna Iyer, for the Appellant; Lal George, Government Pleader for Respondents No. 1 and 2 and M. Krishnan Nair, for the Respondent

Judgement

Thomas, Ag., C.J.

Appellants are the mortgagees as per Ext. P-1 usufructuary mortgage deed executed on 30th May 1964 for a

mortgage sum of Rs. 300. When the Kerala Debt Relief Act, 1977-Act 17 of 1977 (for short "the Act") came into force on 13th January 1977,

the mortgagor applied u/s 4 of the Act for reconveyance of mortgaged property on the premise that the mortgage stood redeemed with the

commencement of the Act. Application of the mortgagor was allowed by the tribunal constituted under the Act as per Ext. P-4 order. Mortgages

challenged the order in an appeal before the Appellate Authority constituted under the Act. But Appellate Authority dismissed the appeal by Ext.

P-6 order. Thereupon, the mortgagees filed the Original Petition for a writ of certiorari under Article 226 of the Constitution for quashing Exts. P-4

and P-6. Learned Single Judge dismissed the Original Petition. Hence this appeal.

2. Two contentions have been advanced by the Appellants. First is that the mortgagor is not entitled to the benefits of the Act inasmuch as he is not

a debtor as defined in Section 2(4) of the Act. Second contention is, as the mortgagees have effected value of improvements on the mortgaged

property, no reconveyance is possible without payment of the entire value of improvements.

3. We shall deal with the first contention now. The definition ""debtor"" contained in Section 2(4) of the Act is this:

(4) ""debtor"" means any person whose annual income does not exceed three thousand rupees, from whom any debt is due, but does not include-

(i) any person from whom debt or debts exceeding three thousand rupees (excluding interest) is or are due;

[sub-clause (ii) is omitted as it is not relevant].

Appellants built up the first contention on the premise that the total debt due from the mortgagor should be worked out by adding to the mortgage

debt the value of improvements effected by the mortgagees on the property also. If so calculated, learned Counsel contends that the aggregate

amount would far exceed the limit of Rs. 3,000 envisaged in the definition. We will now consider the said contention.

3A. The word "debt" is defined in Section 2(3) of the Act as "any liability in cash or kind, whether secured or unsecured, due from or incurred by a

debtor on or before the date of commencement of "this Act, whether payable under a contract, or under a decree or order of any Court, or

otherwise, and subsisting on that date...". (The rest of the definition is omitted as not relevant). Here a liability would snowball into a debt falling

under the definition only if such liability became due "on or before the date of commencement of this Act". The liability of a mortgagor to pay value

of improvements will arise only after redemption and not before. Redemption of the mortgage in this case is envisaged in Section 3(f) of the Act.

We extract the said section.

3. Discharge of debt.-Notwithstanding anything contained in any other law for the time being in force, or in any contract or other instrument having

force by virtue of any such law, or in any decree or order of Court, with effect on and from the commencement of this Act-

* * * *

(f) every mortgage executed by a debtor in favour of a creditor shall stand redeemed and the creditor shall be bound to deliver possession of the

mortgaged property to the debtor.

The effect of the said section is that redemption is an operation of the statute and not any act of parties. In other words, on the commencement of

the Act, redemption of mortgage becomes an accomplished fact. The question of liability to pay compensation for value of improvements would

arise only after accomplishment of redemption of the mortgage. In other words, redemption of the mortgage is sine qua non for any claim to be

made for value of improvements. The corollary is, mortgagees cannot add the value of improvements to the mortgaged money for working out the

total amount due to them before redemption takes place for the purpose of showing that the amount of debt exceeds the limit fixed in the definition

clause.

4. While dealing with the second contention, we may point out that the right to claim value of improvements can arise either under the terms of the

mortgage deed or under any statutory provision. It is admitted by both sides that Ext. P-I mortgage deed empowered the mortgagees to effect

value of improvements on the mortgaged properties after the expiry of six months if the mortgaged money was not paid within time. If the

mortgagees have effected value of improvements on the property, they have a right to claim value of improvements because such a right has been

created by the terms of the mortgage deed. That right can be claimed only at the time of redemption. But Section 3 of the Act starts with the non

obstante clause like ""notwithstanding anything contained in any other law for the time being in force, or in any contract or..."". The self-operating

redemption process would, therefore, take place in spite of the term in Ext. P-I mortgage deed that the mortgagees are entitled to value of

improvements.

5. Nor can the mortgagees insist that before reconveyance of the property the value of improvements should be paid as a condition precedent on

the principles envisaged in Act 29 of 1958 because Section 3(f) of the Act contains a statutory obligation cast on the mortgagees to deliver

possession of the mortgaged property to the debtor. The said obligation is also uncircumscribed by any term of the contract or by the provisions of

any other law because the non obstante clause stretches its tentacles up to the said statutory obligation envisaged in Section 3(f) of the Act. If the

statutory obligation cast on the mortgagees is not discharged, the mortgagor is empowered to resort to Section 4 of the Act and in such a case the

Tribunal is empowered to pass appropriate orders for effecting such reconveyance.

6. But then the next question is whether the right of the mortgagees who are entitled to value of improvements as per the terms of the contract will

stand foreclosed once and for all. Our attention was invited to the decision of a learned Single Judge of this Court in Khadija Umma v. Paru 1986

KLT 725. M.P. Menon, J. has considered the question whether the Tribunal has the jurisdiction to pass orders for payment of value of

improvements. Learned Judge after making a survey of the relevant provisions of "the Act concluded that the Act does not contemplate any

arrangement for going into compensation claims where the mortgagor is a debtor as defined in the Act. True, there is no provision in the Act for

dealing with the claims of compensation either by virtue of the terms of a contract or any other statute. The statutory obligation to deliver

possession is, no doubt, despite the right created under any contract or law for entitlement to value of improvements. But it is worthy to note that

Section 4 which empowers a debtor to apply to the Tribunal for reconveyance of The property is not circumscribed by any non obstante clause as

could be seen in Section 3. We discerned from the scheme of the Act the intention of the legislature not to foreclose the right of any mortgagee to

have value of the improvements effected by him on the mortgaged property, even though the scheme of the Act did not incorporate any particular

procedure for quantification or payment of such value of improvements.

7. We are, therefore, of the view that if mortgagees are entitled to value of improvements, the same can be claimed only after reconveyance of the

property and in a properly instituted civil suit. We, therefore, dispose of this Writ Appeal by making it clear that the orders under challenge will be

without prejudice to the right of the Appellants for instituting a civil suit claiming value of improvements if they are entitled to it otherwise.

Writ Appeal is disposed of in the above terms.

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