AIR 1953 Mad 540 : (1953) ILR (Mad) 650 : (1953) 66 LW 35 : (1952) 2 MLJ 880

Madras High Court

Case No: Appeal No. 640 and C.M.P. No. 6875 of 1947

Guruperla Subbarayulu Setti and Others		APPELLANT
	Vs	
Thota Venkataramanamma and Others		RESPONDENT

Date of Decision: Aug. 18, 1952

Acts Referred:

- Tamil Nadu Agriculturists Relief Act, 1938 - Section 4

Citation: AIR 1953 Mad 540 : (1953) ILR (Mad) 650 : (1953) 66 LW 35 : (1952) 2 MLJ 880

Hon'ble Judges: Satyanarayana Rao, J; Krishnaswami Nayudu, J

Bench: Division Bench

Advocate: Suryanarayana Rao and Ramakrishna Rao, for the Appellant; S. Sitarama Iyer and S. Rajarama, for the Respondent

Judgement

Satyanarayana Rao, J.
The plaintiffs are the appellants in this appeal. The suit was instituted for the recovery of a large amount of Rs. 30000 as principal and interest due under a mortgage, Ex. P. 1, dated 19-9-25 executed by one T. Seshaih, the father of defendants 2 to 4 and the husband of the first defendant in favour of the plaintiffs. There were various defences to the action, and we are now concerned only with two questions: (1) whether the debt is liable to be scaled down under Madras Act 4 of 1938 and (2) what amount should be deducted as rent for the godown in the occupation of the plaintiffs from the amount due under the mortgage.

2. The defendants claimed that they were agriculturists entitled to the relief under the Act. The learned Subordinate Judge found that they were agriculturists, and that they were entitled to relief under Act 4 of 1938. The attempt of the plaintiffs was to exclude the application of the Act to the present case by alleging that the case fell u/s 4(d) of the Act,

which states:

"Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:.....

(b) any debt contracted on the security of house property alone in a Municipality, a cantonment or a panchayat which was a Union before the 26th August 1930." The learned trial Judge did not accept this plea; as he found that security was not created on "house property alone" within the meaning of the sub-clause. As regards the deduction from the mortgage amount, of rent which was payable by the mortgagee for the godown occupied by him he found that the original arrangement was that the mortgagee should pay rent at the rate of Rs. 2-8-0 per" month for the godown, but as in 1928 D. W. 6, who occupied a portion of the godown paid a higher rent and that the defendants were entitled to claim deduction of rent at the rate of Rs. 5 per month from 1928 instead of Rs. 2-8-0 per month.

3. The appellants in this appeal challenge these findings of the learned Subordinate Judge. As regards the contention of the plaintiffs that the Act does not apply to the mortgage in suit because security was created on house property alone, we think that the view taken by the learned Subordinate Judge is correct. Ex. P. 1, the mortgage, comprises four items of property. The first three items described in the schedule to the mortgage deed are tiled houses within specified boundaries situate at Gudur. The fourth item which is also described by boundaries is a vacant site of 30 ankanams, which, it is in evidence, is not in the same row as the houses but in the opposite row. This item is treated therefore in the mortgage as an independent unit not appurtenant to any of the three houses specified in the deed. The clause relied on was interpreted by this Court though by a single Judge, in -- V. Ponnambalam Chetti and Others Vs. Ambalam Raman Chetti and Others, . "House property" in the clause means not, only the house and the site on which the house stands but also the site that is appurtenant to the house, and which is necessary for its enjoyment. It included garden, compound and yard, which are enjoyed as part of the house. If, however, there is an independent site, which is intended for a different purpose such as for building, and is treated as a separate unit by the parties and also in the assessment registers of the Panchayat, Union or the Municipality, it should be treated as not forming part of the house property, and if such item is included in the mortgage deed along with the other house property, the clause does not apply, as the security was not created on the house property alone within the meaning of the clause. In contrast to that decision, we have the later decision in -- "Namasivaya Mudaliar v. Srinivasa Iyangar", AIR 1940 Mad 54, in which the site was, unlike the site in the earlier case, in the same compound as the house and was enjoyed as appurtenant to it. The whole of the property, that is, the house and the site within the compound wall was treated as house property, and therefore the benefit of the exemption was given to the mortgagee creditor. The later decision in -- Jikkini Bibi Sahiba Vs. Ranganayaki Ammal and Another, , doss not throw much light except that in that case along with house property the mortgagors mortgaged a site on which there was a superstructure belonging

to a third party. The superstructure was excluded from the security, as it did not belong to them. In such a case it was held that it could not be said that the security was created on house property alone, as the mortgagor included in the mortgage, apart from house property, a site on which the superstructure belonging to some other person stood.

4. In our opinion the three decisions interpreted and applied the clause correctly, and in the light of those decisions, we have to consider the contention raised on behalf of the plaintiffs. Notwithstanding that this site was treated as a different unit in the mortgage and that it was removed from the house, it was claimed, on behalf of the plaintiffs that one Chenchamma was living as a tenant in one of the houses, and was utilising this vacant site, at least as part of it, as a latrine and also as a dung-pit. This Chenchamma, assuming the evidence adduced on behalf of the plaintiffs is acceptable, came into possession of the house only about 20 years ago, i.e., long after the mortgage. Merely because she used the site later on for the purpose of a latrine and a dung-pit, it cannot be said that that circumstance makes the site which is removed and which is far away from the house, appurtenant to the house, and therefore the whole of it constitutes house property. At the time of the mortgage, Chenchamma was not living in the house, and this site was not being used as a latrine or for a dung-pit. It is also in evidence that subsequently a portion of the site was built upon by T. Seshaih, the original mortgagor, and that indicates, in our opinion, that the site was intended for building purposes and was never treated as appurtenant to any of the three houses at or about the time of the mortgage. The material date on which the question has to be decided is the date on which security was created on the house property and not a subsequent date. In this view of the evidence and in view of the interpretation placed on the clause by the three aforesaid decisions, we think that the conclusion reached by the learned Subordinate Judge is correct. He also held that the clause did not apply for another reason, namely, that it was not established by evidence that this Panchayat of Gudur was in existence before 26-8-1939, as required by the clause. In the plaint it was alleged by the plaintiffs that the house site was within the panchayat, which was in existence before 1930, and that allegation was not denied by the defendants in the written statement. The learned Judge seems to have overlooked this aspect and failed to notice that there was really no serious dispute about this fact. It must therefore be taken as an established fact, that this union of Gudur was in existence even before 1930. In this view of the case it is unnecessary to admit additional evidence documents now tendered here, that is, the tax receipts which go to show that the union was in existence before, 1930.

5. The next question is whether the learned Judge was correct in holding that the defendants were agriculturists on the relevant dates. (His Lordship after holding upon an examination of the evidence that the lower Court was correct in concluding the defendant an agriculturist proceeded further.) It follows therefore that the learned Subordinate Judge was right in scaling down the debt, and it is not disputed before us that the correct amount after scaling down was as stated by the trial Court.

6. The only other question that has to be considered is the amount of rent that should be deducted from the mortgage amount due to the plaintiffs. The evidence in the case discussed by the learned Judge in paragraph 19 of the judgment undoubtedly establishes that there was an arrangement from the beginning to pay rent at the rate of Rs. 2-8-0 per month. In paragraph 20, however, the learned Judge expressed the view that, in or about 1928 there must have been a revised agreement by which the original rent was enhanced from Rs. 2-8-0 per month to Rs. 5. We, are of opinion that there is no warrant for this inference of the learned Judge in the evidence adduced in the case. Merely because D. W. 6 paid a higher rent for a portion of the godown, it does hot follow that there was an agreement to enhance the rent due by the plaintiffs in respect of the godown in their possession. We think there-fore that upto the date of the suit deduction should be at the rate of Rs. 2-8-0 a month and not at Rs. 5. The suit was instituted on 28-8-46, and thereafter it is not disputed before us that the proper rent which the plaintiffs should pay to the defendants until delivery of possession is Rs. 5 per month.

7. the decree of the learned S. J. would therefore be modified by giving credit to the plaintiffs in a sum of Rs. 545 with regard to the rent. Except for this slight variation the decree of the lower court is confirmed and the appeal is dismissed with costs. C. M. P. No. 6875 of 1947 is dismissed.