

MATHEVAN PILLAI PADMANABHA PILLAI

v.

ARULAPPAN NADAR YOVAN NADAR AND ORS.

SEPTEMBER 4, 1998

[K.T. THOMAS AND M. SRINIVASAN, JJ.]

Kerala Land Reforms Act, 1964 : Section 4-A (as amended by Act 35 of 1969).

Deemed tenant—Pre-conditions—Mortgagor executed usufructuary mortgage in favour of mortgagee in 1094 ME (1919)—Document executed in 1119 ME (1944) recited that mortgage amount was received by mortgagee and land was surrendered to mortgagor—A second mortgage was given by the same mortgagor to the same mortgagee in 1122 ME (1947) for a larger amount inclusive of the amount of the earlier mortgage—Mortgagor's suit for redemption of the second mortgage resisted by mortgagee on ground that the land was in mortgagee's possession for a continuous period of more than 50 years prior to the relevant date i.e. 1.1.1970 and, therefore, mortgagee was entitled to fixity of tenure by virtue of S. 4-A—Trial court passed a decree for redemption—Appellate court found as a fact that possession never passed on to the mortgagor—Held: Mortgagee must hold the land comprised in the mortgage for a continuous period of 50 years—Throughout the period of the said 50 years the land must be under mortgage though there can be more than one mortgage—In view of the finding of fact by appellate court that possession never passed on to the mortgagor, the appellate court was right in dismissing the suit for redemption.

The appellant's predecessor executed a usufructuary mortgage in favour of the respondents in 1094 ME (1919). In the year 1119 ME (1944) a document was executed in which it was recited that the mortgagees had received the mortgage amount and the land was surrendered to the mortgagor. Simultaneously, another document was executed by the same mortgagor to the same mortgagees. In the year 1122 ME (1947) a further mortgage was given by the mortgagor to the mortgagees for a larger amount inclusive of the amount of the earlier mortgage.

The appellant filed a suit for redemption of the mortgage of the year 1122 ME (1947). The suit was resisted by the respondents on the ground

A that the respondents had been holding the land continuously for more than 50 years prior to the relevant date i.e. 1.1.1970 and, therefore, the respondents were entitled to fixity of tenure by virtue of Section 4-A of the Kerala Land Reforms Act, 1964 (as amended by Act 35 of 1969). The trial court passed a decree for redemption. The appellate court had found as a fact that possession did not pass on to the mortgagor although the recitals of the document by which the first mortgage was discharged showed that possession was handed over to the mortgagor. Thus the appeal filed was allowed which was confirmed by the High Court. Hence this appeal.

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C On behalf of the appellant it was contended that there was a break in the continuity of possession and, therefore, the period of 50 years mentioned in Section 4-A of the Act should be calculated from the date on which the fresh mortgage was executed.

Dismissing the appeal, this Court

D HELD : 1.1. Section 4-A of the Kerala Land Reforms Act, 1964 (as amended by Act 35 of 1969) requires only the holding of the land comprised in the mortgage for a continuous period of not less than fifty years by the mortgagee or lessee. Section 4-A does not insist upon there being only one mortgage throughout the period of fifty years. The language of Section 4-A is wide enough to show that there can be more than one mortgage but the mortgagee shall hold the land comprised in the mortgage continuously for a period of not less than fifty years. [440-D-E]

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F 1.2. In view of the finding of the appellate court that the mortgagees were in possession of the Land for a continuous period of more than 50 years, Section 4-A of the Act was attracted and, therefore, the appellate court was right in dismissing the suit for redemption. [439-F; 441-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3727 of 1988.

G From the Judgment and Order dated 28.11.85 of the Kerala High Court in S.A. No. 774 of 1980.

G.V. Chandrashekhar and T.G.N. Nair for the Appellant.

H P.S. Poti and Ms. Malini Poduval for the Respondents.

The Judgment of the Court was delivered by

A

SRINIVASAN, J. The only question which arises for consideration in this appeal is whether the respondents can be deemed to be tenants within the meaning of Section 4A of the Kerala Land Reforms Act 1 of 1964 (for short, 'the Act') as amended by Act 35 of 1969.

B

2. The appellants predecessor executed a usufructuary mortgage in favour of the respondents in the year 1094 M.E. corresponding to 1919. In the year 1119 ME (1944) a document was executed in which it was recited that the mortgage amount had been received by the mortgagees and the land was surrendered to the mortgagor. Simultaneously another document was executed by the same mortgagor to the same mortgagees. In the year 1122 ME (1947) a further mortgage was given by the mortgagor to the mortgagees for a larger amount inclusive of the amount of the earlier mortgage.

C

3. On 30.1.1974 the appellant filed a suit for redemption of the mortgage of the year 1122 ME (1947). The suit was resisted by the respondents on several grounds, chief among them being that they had become tenants entitled to fixity of tenure by virtue of Section 4A of the Act. The trial Court rejected the contentions of the respondents and passed a decree for redemption in favour of the appellant.

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4. On appeal by defendants 3,4,5,6, and 8 the Principal Subordinate Judge, Trivandrum held that the defendants had been holding the land continuously for more than 50 years prior to the relevant date i.e. 1.1.1970 and consequently the relief of redemption could not be granted to the plaintiff. Thus the appeal was allowed and the suit was dismissed. The appellant approached the High Court of Kerala with a second appeal which ended in dismissal on 28.11.85. Hence, the appellant is before us.

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5. According to the appellant the recitals of Ex.A-3 by which the first mortgage of 1094 ME was discharged prove that possession was handed over to the mortgagor and when a fresh mortgage was executed by the mortgagor to the mortgagee, there was a break in the continuity of possession and therefore the period of 50 years mentioned in the Section should be calculated from 4.8.1119 ME, the date on which the earlier mortgage was terminated and the later mortgage was executed.

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A 6. The relevant part of the Section in the Act reads as follows :

"Section 4A: Certain mortgagees and lessees of mortgagees to be deemed tenants :-

B (1) Notwithstanding anything to the contrary contained in any law or in any contract, custom, or usage, or in any judgment, decree or order of court, a mortgagee with possession of land, other than land principally planted with rubber, coffee, tea or cardamom, or the lessee of a mortgagee of such land shall be deemed to be a tenant if :

C (a) the mortgagee or lessee was holding the land comprised in the mortgage for a continuous period of not less than fifty years immediately preceding the commencement of the Kerala Land Reforms (Amendment) Act, 1969; or"

D 7. The Section requires only the holding of the land comprised in the mortgage for a continuous period of not less than fifty years by the mortgagee or lessee. The Section does not insist upon there being only one mortgage throughout the period of fifty years. The language of the Section is wide enough to show that there can be more than one mortgage but the mortgagee shall hold the land comprised in the mortgages continuously for a period of not less than fifty years.

E 8. The Principal Subordinate Judge, Trivandrum has found as a fact that possession did not pass on to the mortgagor on the date of Ex. A-3. The relevant passage in his judgment is as follows :

F "It is true that Ex.A-3 has been got executed purporting to release the mortgage evidenced by A-2 on payment of the mortgage amount and value of improvements. But Ex. B-2 would show that in fact no payment of mortgage amount took place in fact but there was only adjustment of the consideration of A-2 mortgage for B-2 otti. It is seen that the executants of A-3 are the ottidars under B-2. A-3 and A-2 have been executed by one after the other on the same day. Excepting the statement in A-3 regarding surrender of possession there is no evidence of actual possession and it is not probable to think there had been in fact a factual surrender of possession under A-3 and an immediate handing over

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possession to the executants of A-3 as per B-2. Under Ex.B-2 the owner is purported to receive a slightly larger consideration than under A-2 otti. Under the circumstances despite A-3 the appellant's predecessor should have been found to continue in possession pursuant to A-2 otti. The otti sought to be redeemed is one evidenced by A-1 which is of the year 1122. It is clear from A-1 that possession was not given under that otti but it is directed therein that the ottidars are to continue in possession granted under B-2".

9. That finding was accepted by the High Court in second appeal and confirmed. We do not find any error whatever in the view taken by the Principal Subordinate Judge and affirmed by the High Court. Hence there is no merit in this appeal and it is hereby dismissed. There will be no order as to costs.

V.S.S.

Appeal dismissed.