

Narayana Pillai Raghavan Pillai

Vs

Narayani Amma Ponnamma

Civil Appeal No. 353 of 1977

(M. M. Punchi, K. Ramaswamy JJ)

18.09.1991

ORDER

1. This appeal by special leave is against the judgment and order dated April 7, 1976 passed by a learned Single Judge of the Kerala High Court in S.A. No. 956 of 1973.
2. The parties herein are successors-in-interest of the original set of mortgagers and mortgagees, being plaintiffs-respondents and defendants-appellants respectively. For the sake of convenience we would keep referring to them as mortgagers and mortgagees. It stands established on the record that by means of mortgage deed Ex. P-1 dated March 18, 1096 (Malayalam year) (1921 of the Gregorian year) the mortgagers mortgaged the suit land in favour of Parameswaran Pillai and his wife Gauri Amma for a total consideration of Fanams 6850. Fanam stately was the currency in the erstwhile Travancore State. Deed Ex. P-1 embodies an admission that the suit property since the Malayali year 1083 stands mortgaged to Parameswaran Pillai for a sum of Fanams 4750 and adjusting the same at that juncture, the same property was being mortgaged for a sum of Fanams 6850, the balance of Fanams 2100 having been received from Gauri Amma (the added mortgagee). The mortgagers filed a suit for redemption of the mortgage before the trial court on January 1, 1969. In the meantime Section 4-A(1)(a) of Kerala Land Reforms Act, 1963 (Act 1 of 1964) appearing on the scene with effect from January 1, 1970 [by virtue of Kerala Land Reforms (Amendment) Act, 1969 (35 of 1969)] gave an ostensible defence to the defendants-mortgagees that they had become deemed tenants and hence possession could not be sought from them on the basis of the mortgage. That provision is set out below :

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

(a) the mortgagee or lessee as 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

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Explanation II. - In computing the period of fifty years referred to in clause (a) or the period of thirty years referred to in clause (c) the period during which the predecessor-in-interest or predecessors-in-interest of the mortgagee or lessee was or

were holding the property shall also be taken into account."

3. The defence set up by the mortgagees appealed to the trial Judge, who took the view that a period of fifty years had elapsed, reckoned immediately preceding the amendment of Kerala Land Reforms Act, 1963. The lower appellate court affirmed that view. The High Court, however, upset the view which has given rise to this appeal.

4. We have heard learned counsel for the parties.

5. Section 58 of the Transfer of Property Act, defines a mortgage as a transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, or an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability. It is apparent from document Ex. P-1 that the suit land stood already transferred to Parameswaran Pillai in one piece, as security for his sum of Fanams 4750 advanced to the mortgagers. Further deed Ex. P-1 acknowledging the existence of that transfer has gone on to raise additional debt of Fanams 2100 and inducting a co-mortgagee who contributed those Fanams 2100. Nowhere in the deed has the earlier mortgage been withdrawn or the security in favour of Parameswaran Pillai been anyway affected. Increase in the mortgage money, induction of a co-mortgagee, non-defining of their shares, in the facts and circumstances of the case, have not altered the situation that Parameswaran Pillai continued as before the mortgagee of the suit land. His tenure of a mortgagee over the entire property is more than fifty years old. It cannot be said that he was his own predecessor-in-interest or a successor-in-interest with regard to the mortgage of the Malayali year 1083. There would thus be no need to deploy the explanation to the peculiar fact situation. The induction of Gauri Amma as a co-mortgagee would not alter the situation that Parameswaran Pillai by himself was a mortgagee for a continuous period of not less than fifty years preceding January 1, 1970. In this view of the matter, the High Court was in error in allowing the appeal of the mortgagers and remitting the case back to the trial court for disposal of the suit in the light of its directions and according to law.

6. Thus for the foregoing reasons, we allow this appeal, set aside the judgment and order of the High Court and dismiss the suit of the plaintiffs-respondents but without any order as to costs.

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