

SUPREME COURT OF INDIA

Madurambigai Ammal

Vs.

D. Somasundaram

C.A.No.19 of 2000

(K. G. Balakrishnan and H. K. Sema JJ.)

03.11.2004

JUDGMENT

1. The defendants are the appellants before us. The respondent nos. 1 to 7 filed a suit for delivery of possession of mortgaged property. The mortgage was executed on 30/11/1974. There were two subsequent mortgages one on 15-7-1975 and second on 18-12-1975. After due notice to the mortgagors, the 13th defendant of the suit brought the suit property on public auction after sufficient advertisements published in the newspapers and the auction was held on 31.8.1981. The plaintiffs in the suit was the highest bidder in the auction.

2. They paid the entire amount and sought for execution of sale-deed of the mortgage. The present appellants filed suit for redemption on 1-10-1981. Originally, it was filed in the form of an application as an indigent person and later it was converted into suit. Based on the sale-deed suit for possession was filed by respondent nos. 2 to 7 on 10.9.84. The present appellants contended that by virtue the suit filed on 1.10.81, the right of redemption survived and it was not effected by the sale held on 31.8.1981. This contention was rejected and suit for possession filed by respondent nos. 2 to 7 was decreed. Against the same O.S.A. was filed and by the impugned judgment the plea raised by the appellants was rejected.

3. We heard learned counsel for the appellants and learned counsel for the respondents. Counsel for the appellants contended that right of the mortgagors to redeem could be extinguished only after the sale deed is executed and as the sale deed was executed subsequent to the suit appellants right of redemption is not lost.

4. It is argued that appellants had filed a suit for redemption prior to the execution of sale deed, the right of redemption would survive and the appellants relied on second proviso to Section 60 of the Transfer of Property Act, 1882. But we do not find any force in this contention. The proviso specifically says that the right conferred by the right of redemption conferred on the mortgagor under Section 60 could be extinguished by the act of parties or by decree of the court. The sale deed was executed in favour of the auction purchaser on 10.11.81 and the appellants in his suit for redemption had not obtained any interim order

staying the operation of the auction sale or the execution of any sale deed and in the absence of such right of redemption would be extinguished.

5. The reliance was placed by the counsel for the appellant on the decision reported in *Narandas Karsondas vs. S.A. Kamtam and another*. This decision is of no assistance to the appellants as it is held in that decision that the right of redemption which is embodied in Section 60 of the Transfer of Property Act is available to the mortgagor unless it has been extinguished by the act of parties and it is only on execution of conveyance and registration of transfer of the mortgagor's interest by registered instrument that the mortgagor's right of redemption will be extinguished. In the instant case the sale deed was executed in favour of respondent nos. 1 to 7 and the right of redemption did not survive and we do not find any reason to interfere with the impugned judgment.

6. The appeal is accordingly dismissed.

No costs.