

TRAVENCORE COCHIN HIGH COURT

Padmanabha Pillai Kochukrishna Pillai

Vs

Lekshmi Pillai Rugmini Pillai Thankachi

Second Appeal No. 310 of 1124

(Govinda Pillai and Gangadhara Menon, JJ.)

04.03.1952

JUDGMENT

Gangadhara Menon, J.

1. The plaintiff is the appellant. The appeal arises out of a suit for the redemption of a mortgage. The plaintiff property belonged to Parasseri tarwad. It was mortgaged to one Narayani Perumal under Ext.E dated 10-11-1053. She assigned her mortgage right to the tarwad of the defendants. By virtue of a decree for partition in the tarwad of the defendants the mortgage right devolved on the defendants. The plaintiff as purchaser of the equity of redemption of the plaintiff property from a member of Parasseri tarwad to whom the property was allotted under a partition in that tarwad brought the suit for redemption of Ext.E mortgage. The defendants raised the plea that the suit was barred by limitation. The learned Munsiff found that Ext.F assignment of mortgage dated 4-1-1066 and Ext.D mortgage dated 29-9-1104 constituted valid acknowledgments and therefore decreed the suit. In appeal by the defendants the learned Judge reversed the decree of the trial court and dismissed the suit as barred by limitation on the view that the ground of exemption from limitation had not been specifically pleaded in the plaint and. that neither Ext.F nor Ext.D amounted to acknowledgments under Section 19, Limitation Act.

2. The learned Judge is clearly wrong in thinking that Ext.F and Ext.D were not relied on in the plaint as acknowledgments. In para 8 of the plaint the plaintiff has clearly stated that the cause of action for the suit arose from the date of Ext.F assignment of the mortgage and from the date of Ext.D mortgage executed by the karnavan of the defendants' tarwad. The defendants were quite alive to this plea set up in para 8 of the plaint and while denying these averments they further denied the mortgage of 1053 and the assignment of 1066 and contended that the property belonged to their tarwad and that the Parasseri tarwad had no right over the property at any time. In answer to the defence plea of limitation, the plaintiff has clarified his case in para 8 of the plaint further in para 15 of the replication. In these circumstances it is rather strange that the lower appellate court should have overlooked altogether para 8 of the plaint and come to the conclusion that the plaint overlooks the provisions of Order 7 Rule 6, Civil Procedure Code. From the plaintiff's pleadings we feel no doubt that the provisions of Order 7 Rule 6, C.P.C., had been substantially complied with. It has also to be pointed out that the document of 1066 (Ext.F)

referred in the plaint and relied on as acknowledgment was produced along with the plaint and the document of 1073 (Ext.D) which was also relied on as acknowledgment was produced as early as 13-4-1122 and both the documents were proved through PW 1 on 9-10-1122. It cannot therefore be said that any surprise was thrown on the defendants.

3. The question then is whether Exts.F and D constitute valid acknowledgments under Section 19 Limitation Act. The learned Judge thinks that the expressions used in these documents are merely descriptive and do not 'per se' import any liability to be redeemed. Ext.F is an assignment of 1066 of Ext.E mortgage right by Narayani Perumal the mortgagee to Irayimman Parameswaran the Karnavan of the defendants tarwad. In Ext.Narayani Perumal stated that she was holding the property as a mortgagee from Kali Narayani of Parasseri tarwad and that she was assigning that mortgage right to Erayimman Parameswaran for the consideration recited in the document. It is thus clear from Ext.F that the mortgagee acknowledged in express terms a subsisting mortgage right which clearly imported a liability to be redeemed. We have no doubt that this is sufficient to constitute a valid acknowledgment. The decisions reported in - '*Mathevan Padmanabhan v. Easwara Pillai Krishna Pillai*', and - '*Sidhari Ram v. Gargi Din*', AIR 1924 Allahabad 458 are exactly in point. In both the cases it was held that a deed of assignment by the mortgagee of an existing mortgage right constituted a valid acknowledgment to save limitation. We are therefore clear that Ext.F amounts to a valid acknowledgment that gives a fresh starting point of limitation to the mortgagor.

4. By Ext.F, Ext.E mortgage right devolved on the tarwad of the defendants. Erayimman Narayanan Tampi in his capacity as karnavan of the tarwad executed Ext.D mortgage on 29-9-1104 in favor of Rugmani Thankachi of the same tarwad for the amount due to her tavazhi under a decree for maintenance. It is stated in Ext.D that item No.1 properties therein are jenmom and item No.2 property is mortgage acquisition of the tarwad, that the executant is in possession of all those properties as kainavan and that he is mortgaging them to Rugmani Thankachi for the consideration stated in the document. The title deeds in respect of item No.2 are also stated to have been handed over along with the mortgage document. The plaint property is item No.2 in Ext.D. The words used in Ext.D in respect of the two sets of properties included therein along with the statement in the document regarding handing over of the title deeds relating to item No.2 leave no room for doubt that what the parties intended was to indicate with precision the right that the tarwad had over the properties that were morgaged under Ext.D, viz. that over item No.1 properties the tarwad had full ownership and that in respect of item No.2, the tarwad had only a mortgage right. Thus in Ext.D there is clear admission that the tarwad had at the time only a mortgage right over item No.2 property implying thereby that the property is liable to be redeemed. We cannot, therefore, agree with the view of the learned Judge that the words used in Ext.D are merely descriptive. The case reported in 22 Trav LJ 1098 (C) is almost a parallel one. That was a suit for the redemption of a sub-mortgage. The plaintiff relied on an acknowledgment contained in a document executed by the sub-mortgagee in favor of a stranger mortgaging his rights under the sub-mortgage. The document contained the following words :

¹27 Trav LJ 961

"The properties which have been obtained by me on Adavu Otti from Raman Parameswaran of Cheelanthimoodu and are being enjoyed by me."

Among the documents handed over at the time of title deeds there was an Advau Otti of 1036. It was held that the document contained a sufficient acknowledgment. Since the statements therein "amounted to an admission that the executant held the property under an Adavu Otti of 1036 and therefore that it was liable to be redeemed." For the reasons stated above we have no hesitation in holding that expression used in Ext.D clearly amounts to a valid acknowledgment under Section 19 Limitation Act. Since the mortgagors got another starting point of limitation from the date of Ext.D, the suit is within time.

5. Therefore we allow this appeal with costs throughout and in reversal of the decree of the lower appellate court we restore that of the learned Munsiff.

Appeal allowed.