M.S. Krishna Iyengar Vs. Krishna and Co. and ors.

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Court : Chennai

Decided On : Jun-15-1976

Reported in : AIR1977Mad90

Judge : Kailasam, C.J. and ;Balasubramanyam, J.

Acts : Tamil Nadu Indebted Person (Temporary Relief) Act, 1975

Appeal No. : A.A.O. No. 14 of 1976

Appellant : M.S. Krishna Iyengar

Respondent : Krishna and Co. and ors.

Judgement :

Kailasam, C.J.

1. This appeal is filed by the fourth defendant in O. S. No. 3 of 1973 on the file of the Subordinate Judge, Tuticorin, against the order passed in E. P. No. 170 of 1974 in the said suit. The plaintiff therein file the suit for recovery of money due on mortgage dated 21-12-1960 for Rs. 10,000, executed by one Srinivasa Iyengar and the appellant herein in favour of the plaintiff. On 23-2-1974, a preliminary decree was passed and also passed. The decree-holder filed E. P. 170 f 1974 for sale of the hypotheca. The sale was posted to 3-9-1975. At this stage, the petition out of which this appeal arises was filed by the appellant for stay of execution proceedings under Tamil Nadu Ordinance 8 of 1975, which has now become the Tamil Nadu Indebted Person (Temporary Relief) Act, Act XLVIII of 1975.

2. The question that arises for consideration in this appeal is whether the appellant is entitled to an order of stay of execution proceedings by virtue of Ordinance 8 of 1975 which has now been enacted as Act XLVIII of 1975.

3. According to the definition of 'indebted person', both under the Ordinance as well as the Act, it is provided, that a person shall not be deemed to be an indebted person if he has in all the four half years immediately preceding the 1st April 1975 been assessed to property or house tax in respect of buildings or lands provided that that aggregate annual rental value of such buildings and lands whether let out or in the occupation of the owner, is not less than two thousand an four hundred rupees. When a person claims to be a debtor, it is open to the creditor to prove that he is not entitled to the benefits of the Act as he falls within the proviso (iii) to Section 2(2) of the Ordinance which corresponds to proviso (iii) to Section 2(2) of the Act. In order to establish that the debtor is not entitled to the benefit of an order of stay as provided under the Ordinance and the Act, a creditor will, have to prove: (1) that in all the four

half years immediately preceding the 1st April 1975, he has been assessed to property or house tax in respect of buildings or lands; and (2) that the aggregate annual rental value of such buildings or lands whether let out or in the occupation of the owner is not less than two thousand and four hundred rupees. It is admitted that the first condition, namely, that the appellant has been assessed to property or house tax in all the four half years immediately preceding the 1st April 1975, has been satisfied. The only contention that is raised is that there was a partition suit in which the decreeholder himself was a party, wherein a preliminary decree was passed on 27-7-171. It is also stated that a final decree was passed on 28-3-1972.

4. The contention on behalf of the appellant is that though he has been assessed to property tax for four half years immediately preceding 1st April 1975, because of the final decree in the partition suit he is not the owner or person entitled to possession of the building or land whose annual rental value is not less than two thousand four hundred rupees. We do not think that even if this contention is accepted the appellant would be entitled to the benefits of the Act. All that the Act requires is that the creditor should establish that the debtor who claims exemption had in all the four half years immediately preceding 1st April 1975 been assessed to property of house tax. That the appellant had been assessed to property tax during the relevant period is not disputed. That the buildings and lands for which the appellant had been assessed to property or house tax are of the aggregate annual rental value of not less than two thousand and four hundred rupees is also not disputed. The plea of the appellant that the assessment is erroneous because of the final decree in the partition suit and that if he had been assessed to the property allotted to him, the annual rental value of the property which actually belonged to him would be less than two thousand fur hundred rupees is not open to him in this proceeding. Equally the Court is not called upon to go into the question as to whether the person has been property assessed and the extent to which he is the legal owner or entitled to possession thereof. The requirement of the proviso would be satisfied on the decree-holder establishing that the debtor has been assessed to property or house tax for four half years immediately preceding 1st April 1975, in respect of buildings or lands whose aggregate annual rental value is not less than two thousand four hundred rupees. In this view, we are unable to agree with the contention of the learned counsel for the appellant that the lower Court was in error in declining to stay the execution proceedings.

5. The appeal is dismissed. In the circumstances, there will be no order as to costs.

6. Appeal dismissed.