

(1939) 01 MAD CK 0008
In the Madras High Court

Adusumilli Gopalakrishnayya

APPELLANT

Vs

Julury Narasimha Rao by guardian Durgamma

RESPONDENT

Date of Decision : 18-01-1939

Acts Referred:

Madras Estates Land Act, 1908 — Section 192

Citation : AIR 1939 Mad 609 : (1939) 49 LW 649 : (1939) 2 MLJ 120

Hon'ble Judges : Krishnaswami Aiyangar, J

Bench : Division Bench

Judgement

Krishnaswami Aiyangar, J.—This is a revision against the order of the Sub-Collector of Bezwada passed on the 5th November, 1936, in a

petition filed by a person interested in a holding sold in execution of a revenue decree. His complaint was that the sale is vitiated by fraud and

material irregularity, particulars of which are given in paragraph 9 of the affidavit filed in support of the petition. The respondent in that petition was

the decree-holder purchaser who took the objection that the Sub-Collector had no jurisdiction to entertain the petition. The objection was

overruled and he has now preferred this revision against that order.

2. I am of opinion that the learned Sub-Collector went wrong in the view he took of the matter. He has taken the view that Section 192 of the

Madras Estates Land Act is so worded as to make the procedure of Order 21, Rule 90, Civil Procedure Code, by which execution sales affected

by material irregularity are allowed to be set aside, available to the respondent in this revision petition. That view is against the ruling of a Bench of

this Court reported in Jagannatha Pillai v. Kathaperumal Pillai (1927) 53 M.L.J. 668 : ILR 51 Mad. 76. In that case the Court had to decide the

question as to whether a suit would lie in a Civil Court to set aside a sale held in execution of a rent decree on the ground of fraud and material

irregularity in publishing and conducting the sale. It was held that the suit would lie. In the course of the judgment the learned Judges have held that

the suit is not barred either by the provisions of the Estates Land Act or by Order 21, Rule 92(3), Civil Procedure Code. Jackson, J., at page 82

says:

In the matter of sales in execution of a decree of the Revenue Court, Section 132 lays down that the provisions of Chapter VI shall be applicable.

In other words, a ryot whose holding is sold up summarily u/s 77(ii) and a ryot whose holding is sold up in execution of a decree of a Revenue

Court shall each alike undergo the procedure set forth from Sections 111 to 131.

3. I read these observations as meaning that Section 192 is not to be construed as allowing a person in the position of the respondent to approach

the Revenue Court with an application for setting aside the sale except under the circumstances specified in Section 131. Part B of the Schedule to

the Madras Estates Land Act which contains a list of the applications which are triable by a Collector refers only to an application u/s 131 for

setting aside the sale of a holding. Further as pointed out by Madhavan Nair, J., in Thota Chenna Kesavulu by mother and guardian Butchi

Venkamma and Others Vs. Thota Veeraswami and Others, , Section 192 is not to be regarded as conferring a right to institute substantive

applications in the Revenue Courts but as one which merely regulates the procedure in respect of matters over which jurisdiction is granted by

Section 189. On this view which I consider to be the only correct view to take on the matter, the petition must be allowed and it is accordingly

allowed with costs.