(1945) 04 MAD CK 0032

In the Madras High Court

Ahmed Batcha Sahib and Others APPELLANT

Vs

Mohamed Haneef Sahib RESPONDENT

Date of Decision : 24-04-1945

Acts Referred:
Madras Estates Land Act, 1908 — Section 146

Citation : (1946) ILR (Mad) 314 : (1945) 2 MLJ 158

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The question in this appeal is whether Section 146 of the Madras Estates Land Act, 1908, which was repealed by the Madras Estates Land (Amendment) Act, 1934, applied to a case where a holding had vested in the Official Assignee of Madras on the insolvency of the ryot.

2. On the 3rd August, 1931, the estate of one Abdul Karim was ordered by this Court to be administered in insolvency. The proceedings had been instituted by a creditor during the lifetime of Abdul Karim, but he died before the order of adjudication was passed. On 2nd June, 1933, the landholder took action u/s 112 of the Madras Estates Land Act for arrears of rent and as a result the property was sold to one Abdul Subhan. Notice of these proceedings was not given to the Official Assignee. On 17th November 1934, Abdul Subhan sold the holding to one Rahima Bi, who is now dead and whose heirs are the plaintiffs. On 31st December, 1934, Moosa Miyan, the eldest son of the insolvent, sold the property, to the first defendant. On 15th March, 1935, the Official Assignee conveyed the property to one Abdul Hakim, who on the 17th February, 1937, sold it to the second defendant.

3. On the 23rd June, 1937, the heirs of Rahima Bi instituted the present suit against the first defendant and his sons (defendants 2 to 4). The suit was for the recovery of possession of the holding. The plaintiffs averred that Rahima Bi had been given possession by the Revenue Court but had been wrongly dispossessed by the first defendant. The first defendant died during the pendency of the suit.

The District Munsiff held that the sale to Abdul Subhan was valid and that consequently the Official Assignee was bound by it. The second defendant, who had bought the property from Abdul Hakim to whom the Official Assignee had sold it on the 15th March, 1935, appealed to the Subordinate Court. The Subordinate Judge held that as no notice had been given by the landholder of the proceedings u/s 112 of the Madras Estates Land Act, the sale was not binding on the Official Assignee. The present appeal is by the plaintiffs against the decree dismissing their suit.

4. As the result of the amendment of the Act in 1934, Section 145(5) requires a landholder to recognise as the tenant a person on whom the holding has devolved by operation of law on receiving notice in writing, from such person. This is an entirely new provision. Section 146 required a landholder on receiving notice to recognise as the tenant a transferee when the holding had been transferred by the act of a ryot or in execution of a decree or order of a Civil Court passed against the ryot or by a sale for arrears of Government revenue or for a demand recoverable as such arrears. It contained no reference to a devolution by operation of law. In Anumala Ankamma Vs. Komaravolu Venkata Subbayya and Others, , a Full Bench of this Court held that the amendments to the Act made in 1934 had no retrospective effect.

5. Before the Act of 1908 was placed on the statute book it had been consistently held by this Court that it was the duty of the landholder to seek out a transferee or a person on whom the holding had vested and serve notice upon him before taking any proceedings to enforce the payment of arrears of rent. The present case is governed by the law as it stood before the amendment of 1934. Section 146 clearly did not apply to such a case. Consequently it was the duty of the landholder to seek out the Official Assignee before bringing the property to sale u/s 112. Admittedly he did not give notice to the official Assignee and consequently the sale is not binding upon him. It follows that the Subordinate Judge was right in dismissing the suit.

6. The appeal is dismissed with costs in favour of the respondent.

