(1914) 01 MAD CK 0013

In the Madras High Court

Annamalai Velan and Others — APPELLANT

Vs

Murugappa Velan and Others — RESPONDENT

Date of Decision : 27-01-1914

Acts Referred:

Citation : AIR 1914 Mad 272 : 22 Ind. Cas. 826 : (1914) 1 LW 212 : (1914) 26 MLJ 238

Judgement

1. The plaintiffs are the appellants in this second appeal. The suit was brought for the cancellation of a rent sale held at the instance of a receiver

who represented the Melwaramdars of certain lands. The receiver as such Melwaramdar became the landlord of the plaintiffs and of the 1st

defendant who were brothers. The rent sale was held on the footing that the 1st defendant was the tenant owning the Kudivaram right after notice

to him u/s 39 of the Rent Recovery Act VIII of 1865 (now superseded). The plaintiffs'' contention is that the 1st defendant did not own the

Kudivaram right on the date of notice u/s 39 that in a partition effected between the plaintiffs and the defendants about 1890, the plaint land and

trees fell to the plaintiffs'' share that the proceedings connected with that rent sale cannot bind the plaintiffs as they were not made parties to the

said sale proceedings and they were not given notice u/s 39 of Rent Recovery Act and the notice given to the 1st defendant will not bind them, and

that there was no muchilika attached or sale proclamation with regard to plaint lands and trees."" In the suit, they joined about 80 persons as

defendants, the defendants Nos. 3 to 80 being the Melwaramdars of the village in which the plaint lands are situated. One of the defences raised

by these melwaramdars was that as a receiver had been appointed in O.S. No. 8 of 1901 on the file of the Subordinate Judge''s Court of Tanjore to be in possession of the entire melwaram rights of all the melwaramdars till the disposal of that suit and as it was that Receiver who gave the

notice u/s 39 of the Rent Recovery Act and brought the plaint properties to sale in the auction in which the 2nd defendant purchased them, the said

receiver was a necessary party-defendant to the suit and the suit was bad for non-joinder of that necessary party. The District Munsif overruled

this contention on the ground that the receiver had no personal interest in the subject matter of the present suit and the melwaramdars (defendants

Nos. 3 to 80) and the purchaser 2nd defendant were the persons directly interested. On appeal, the District Court of Tanjore held that the receiver

was a necessary party. Its reasons are "" that a Receiver''s acts are not necessarily or probably for the benefit of each of the parties to the

proceedings, that he is not the representative of any or all of them, but of the Court and of the estate, the ownership of which is uncertain ; that the

object of his appointment is to provide a provisional representative of the estate, who can do legal acts without the question of title in dispute

arising ; and this object would be frustrated, if a plaintiff would go behind him and implead the contesting Melwaramdars themselves."" The District

Court therefore remanded the suit to the District Munsif''s Court for retrial after giving the plaintiffs an opportunity to make the Receiver a

supplemental defendant. When the Receiver was made a supplemental defendant, more than one year had elapsed from the date of the rent sale

and the District Munsif dismissed the whole suit as barred by limitation as the necessary party, the defendant Receiver, was impleaded only after

the period of one year prescribed by Article 12(b) of the Limitation Act. This second decision of the District Munsif''s Court dismissing the suit as

barred by limitation was confirmed by the District Judge on appeal. In the second appeal before us, various contentions have been raised, but we

think it is necessary to set out only the 6th and 8th grounds of the appeal memo which are as follows: ""6. The Receiver being an unnecessary party,

the lower appellate Court has erred in directing the plaintiff to add him as a party and then to dismiss the whole suit on the ground of limitation.

8. The lower appellate court has erred in remanding the case. It should have disposed of the case on the merits.

2. We are of opinion that none of the melwaramdars nor the receiver is a necessary party to this suit to set aside a rent sale and that it is only the

2nd defendant the purchaser at the rent sale who is a necessary party defendant. A landlord who under the Rent Recovery Act VIII of 1865 takes

steps by the issue of notice u/s 39 or otherwise to bring the tenant''s property to sale is not a party to the sale. Nor is such a sale held in execution

of any decree to which he is a party. He has only to send a duplicate of the notice u/s 39 to the Collector with an endorsement stating the date of

service of the notice and the mode of service effected and the Collector proceeds to sell the property under Sections 40, 18, 33, and 35 of the

Rent Recovery Act, (Section 40 making the other sections which directly relate to the mode of sale of Immovable properties also apply to the

mode of sale of Immovable properties). There is no provision in the Act indicating that the landlord who brings about an illegal or irregular sale is a

necessary party to a suit brought in the Civil Court to have the sale set aside. Under Order 1 Rule 3. C.P.C., the proper persons to be joined as

defendants in a suit are those "" against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or

transactions is alleged to exist, whether jointly, severally or in the alternative."" When the sale of the Kudivaram right in a land takes place under the

auspices of the Collector under the Rent Recovery Act and the tenant (the owner of the Kudivaram right) brings a suit to set aside that sale, the

relief (the granting of which establishes or re-establishes the title of the plaintiff when so granted will affect only the purchaser at the rent sale and no

other person and hence the right to such relief exists only against the rent auction purchaser. In the case of a. sale under the CPC in execution of a

decree, the setting aside of the sale will affect the decree holder also, as under. Order 21 Rule 93 if the sale is set aside, he cannot take or retain

the purchase money towards his decree amount and he will be further be delayed in obtaining the fruits of his decree. Hence to proceedings under

Order 21, Rule 90 he has been held to be a necessary party. Sales under the Rent Recovery Act, however, stand on a different footing. In Bal

Mokoond Lall v. Jirjudhun Roy ILR (1882) C. 271 the question was considered whether in a suit to set aside even a revenue sale, the Collector

was a necessary party under the Bengal Act XI of 1859. We shall quote the following paragraphs of Mr. Justice Miner''s judgment which on this

point was concurred in fully by Norris J.: ""Then a question was raised to the effect that the plaintiff was bound to make the Secretary of State a party in this suit, and in support of the appellant''s contention upon this point our attention was drawn to the provisions of Section 35, Act XI of

1859. That section says: ''In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to

possession, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current public

securities."" Comparing this section with the analogous section in Regulation VIII of 1819, viz., Section 14, which is to the effect that "" the

purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the court shall be careful to indemnify him against all

loss, at the charge of the Zemindar or person at whose suit the sale may have been made''. It appears to me that this Section 35 by itself does not

afford any ground for the contention that the Secretary of State was a necessary party to the suit. It merely provides that in the event of a sale

being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase money shall be

refunded to the purchaser by Government, together with interest at the highest rate of the current public securities. But it appears to me to be clear

that Section 35 does not afford any support to the contention raised before us, yet it is by no means clear that the Government was not interested

in the question raised in the suit because, if the sale be set aside, the Collector will have to proceed de novo in the matter for the realization of the

arrears of revenue. The Government, therefore, have such interest in the suit as would on their application, entitle them to be made a party to it.

Thus it was held that the Secretary of State is not a necessary party to the suit even if the Government would have to refund the purchase money if

the sale was set aside. But as the Government was interested in the result of the suit by reason of the provision that the Government should refund

the purchase money in the event of the sale being set aside, the Government on their application may be made a party to the suit. This view of the

position of a person who brings about and conducts a revenue sale under the Bengal Act applies, it seems to us, a fortiori to the case of the person

who brings about and conducts a rent sale under Act VIII of 1865. In Balkishen Das v. Simpson ILR (1898) C. 833 their Lordships of the Privy

Council had to deal with an objection raised by the respondent that the Secretary of State for India had not been joined as a party to the appeal before them in a case which related to the setting aside of a revenue sale. Their Lordships say that in their opinion the position of the Indian

Secretary, in cases like the present, is correctly explained by Mr. Justice Mitter in Bal Movkund Lall v. Jirjudhun Rao ILR (1882) C. 271."" It is

clear to us that but for the provision in Section 315 C.P.C. (Order 21 Rule 93) even the decree-holder will not be a necessary party to an

application under Order 21 Rule 90 or Order 21 Rule 91 to set aside a court auction sale and because the general rule of caveat emptor was

relaxed in favour of a court auction purchaser in Order 21 Rule 91 and Order 21 Rule 93, the decree-holder is a necessary party in applications to

set aside court auction sales. The order of remand, therefore, by the District Court, cannot be supported but it need not be set aside at this stage.

Neither the Melwaramdars nor the Receiver being necessary parties to the present suit, the addition of the Receiver merely for the purpose of

safeguarding their interests (if any), will not make, the provisions of Section 22 of the Limitation Act applicable. (See Guruvayya v. Dattatraya ILR

(1903) B. 11.) And the suit brought within the limitation period (assuming as against the plaintiffs the suit has to be brought within one year after the

sale) against the only necessary party-defendant (namely the purchaser, 2nd defendant) is not barred by limitation. We, therefore, set aside the

decisions of the lower Courts dismissing the suit as barred and remand the suit to the Court of first instance to decide the case on the issues Nos. 2

and 6 and any other questions which might arise other than those dealt with by us, that is, other than the question of limitation and the question of

the Receiver being a necessary party. None of the party defendants need, however, be struck off the record. The District Munsift will, in disposing

of the case de novo, give findings on the merits of the case also (unless the suit is dismissed for default, or is withdrawn or is compromised) in

order to prevent further remands in this suit which is nearly 9 years old already. All parties shall be at liberty to adduce evidence. Costs hitherto

incurred will abide the result of the first decision of the District Munsif.

