

(1932) 04 MAD CK 0017
In the Madras High Court

Balijepalli Ramakoti Suryanarayana Tanodar and Another	APPELLANT
Vs	
Kampalli Ramachendrudu and Others	RESPONDENT

Date of Decision : 18-04-1932

Acts Referred:

Citation : AIR 1932 Mad 716 : (1933) 37 LW 655

Hon'ble Judges : Anantakrishna Ayyar, J;Anantakrishna Aiyar, J

Bench : Division Bench

Judgement

Anantakrishna Ayyar, J.—In summary Suit No. 448 of 1916 on the file of the Deputy Collector, Nidadavole--the landholder obtained a

decree for rent against 6 defendants. Subsequently, the landholder applied to the Court of the Deputy Collector for attachment and sale of 150

acres in R.S. field No. 567 and attachment was made on 8th September 1908. Thereupon, R. Ramchandrudu put in a claim petition in the Deputy

Collector's Court Under Order 21, Rule 58, Civil P.C., on the ground that the property attached was in his possession and enjoyment, and that

the judgment debtor had nothing to do with the same. But the landholder decree-holder filed a counter petition pointing out that rent due to him

being the first charge on the holding any transfer made subsequent to the date of the arrears could not save the transferred part of the holding from

being liable for the arrears and that the claim was further unsustainable as the claimant had bought the property from the prior raiyats subsequent to

the decree.

2. The Deputy Collector came to the conclusion that the holding, on which the arrears which were the subject matter of the suit accrued, consisted

of 14 survey numbers with an area of 48.31 acres that it was evident from Ex. D

series that the landholder had issued receipts to L. Veerasami for rent due in respect of two of the survey numbers included in the original holding, that the claimant had purchased from the vendee of Veerasami a portion and another portion from Veerasami himself and that the land-holder had accepted rent for the said two survey numbers from the claimant himself. The learned Deputy Collector inferred from the circumstances and from the documents filed in the case that the land holder recognized the transfer then prior to the suit by collecting rent from Veerasami on the transferred portion. Being therefore of opinion that the land in the claimant's possession was not liable to attachment in execution of the decree obtained by the land-holder against defendants 1 to 6, counter-petitioners Nos. 2 to 7, as the same had been transferred to the claimant's vendor long before the accumulation of the arrears of the holding and that the land-holder had recognized the transfer and accepted the transferee as his raiyats he allowed the claim. The land holder has preferred this Civil Revision Petition against that order.

3. On behalf of the petitioner it was contended before me that having regard to the provisions of Section 5, Estates Land Act, which gives the land-holder a " first charge upon holding for the rent due, and to the provisions of Section 132 of the Act, it was not open to the lower Court to entertain the claim petition and that though the point was not taken in the lower Court, yet, as the objection related to want of jurisdiction in the lower Court to entertain the claim petition, the petitioner was entitled to raise the question for the first time in revision and it was submitted that the lower Court's order should be reversed and the claim petition dismissed on the ground of want of jurisdiction in the Court to entertain it.

4. On behalf of respondent 1 claimant on the other hand it was argued that having regard to the provisions of Section 192, Estates Land Act, the claim sections of the Code of Civil Procedure, contained in Order 21, apply to the Revenue Court, and that there was nothing in other provisions of the Act to make the said provisions inapplicable and my attention was drawn to the decision in Periathambi Nayinar Vs. Gundhunada Nayinar and Others, , in support of the contention. The decision in Periathambi Nayinar Vs. Gundhunada Nayinar and Others, seems to be directly in point and following that decision, I must overrule the main contention raised by the

learned advocate for the petitioner on the question of jurisdiction. It

was also argued that even under the Code of Civil Procedure, a claim petition could not be entertained when properties are sought to be sold in

execution of a mortgage decree, and as rent constitutes a charge on the holding, the Deputy Collector had no jurisdiction to entertain the claim

petition, as the holding could be sold by him free of encumbrances giving effect to the first charge and that the claim provisions of the CPC should

be held inapplicable on this ground also.

5. It is no doubt true that a claim petition could not be entertained by a Court which passed the usual mortgage-decree directing the property to be

sold in default of payment when the property is simply sought to be sold in pursuance of the mortgage decree: see *Krishnaswamy Gounder Vs.*

Nagarathnammal, Deefholts v. Peters [1887] 14 Cal. 631, *Himatram v, Khushal Jethira* [1889] 18 Bom. 98, *Hukum Singh v. Raghubir Saran*

[1905] 27 All. 700 *Ragho Pathan v. Lachan Koer* AIR 1919 Pat. 131: see also *Radhammadhab Holdar v. Manohar Mooherjee* [1888] 15 Cal.

756. The decree itself having directed the sale of the property in case of non-payment of the amount, there is no necessity to attach the property in

execution of such a mortgage decree. As stated by Sir W. Comer Petheram, Kt., C.J. and Ghose, J., in *Deefholts v. Peters* [1887] 14 Cal. 631:

Proceedings by way of claim are applicable only to cases of money-decrees where property of the judgment-debtor has been attached; that is

where some property of the judgment debtor is attached for the purpose of satisfying any general money claim.... But where that property has been

dealt with in a solemn way by the decree of the Court and has been declared liable to sale under the mortgage that remedy would not be

applicable.... In cases like this, the remedy is not by claim u/s 278(of the Code of 1882), but is either by regular suit to establish his right to the

property, by resistance to the purchaser, or the mortgagee, or other person who would be put in possession of the property.

6. It is only when the property is attached the right to put any claim petition is given Under Order 21, Rule 58, Civil P.C., which expressly states

that:

where any claim is preferred to or any objection is made to the attachment of, any property attached in execution of a decree.... Court shall

proceed to investigate the claim.

7. The question arose in some cases whether where the decree holder in such a mortgage suit attaches the same property in execution of his

decree, a claim petition is maintainable. Courts have held that though it would not be necessary to have any attachment in such cases, yet, if for any

reason the decree-holder in a mortgage suit attaches the property, then claim petitions are entertainable. In *Mallikarjunadu Setti v. Lingamurti*.

Pantulu [1902] 25 Mad. 244, this is what the learned Judge Sir V. Bhashyam Aiyangar, J., stated at p. 282:

Under the Code of Civil Procedure, it is only property that had been attached that could be ordered by the Court to be sold: vide Section 284.

Hence, it was that prior to the passing of the Transfer of Property Act, and in this Presidency even for some years after it, mortgage decrees used

to be executed by first attaching the mortgaged property referred to in the decree, and then obtaining u/s 284, Civil P.C., an order for sale, the

result of which was that claims to the mortgaged property preferred by strangers used to be entertained and summarily adjudicated upon under the

claim sections of the Civil Procedure Code.

8. In *Dayachand v. Nemchand Hemchand Dharamchand* [1880] 4 Bom. 515 (F.B), Westropp, C. J. in delivering the opinion of the Full Bench

observed as follows:

It is stated that the house was on the plaintiff's application, attached with a view to recover the amount of the decree on the mortgage. It seems to

be the inveterate practice of the Mofussil Courts of this Presidency to issue an attachment in enforcement of a decree establishing a mortgage, and

directing a sale of the mortgaged premises in satisfaction of the mortgage. If the decree contain, as it ought to contain, a direction for sale of the

mortgaged premises, the proceeding under such a decree by attachment would seem to be unnecessary, as well as expensive and dilatory. Neither

in this Court at its original jurisdiction side, nor in the English or Irish Courts of Equity, is or has been, any such procedure resorted to for the

enforcement of a decree directing a sale. The direction for sale in the decree is, in itself, sufficient authority for the sale. That direction is founded on

the specific lien or charge on the mortgaged premises created by the contract of mortgage, and not on the execution clauses in the Code of Civil

Procedure.

9. Similarly, Melvill, J., in the case reported as Narayanarao Damodar v. Balhrishna Mahadev [1879] 4 Bom 529 observed:

In execution of that decree he proceeded, in accordance with the usual (but, as we think unnecessary) practice in the mofussil, to attach the mortgaged property.

10. In Venkatanarsammah v. Ramiah [1878] 2 Mad. 108, Kernan, J., observed as follows:

In the High Court on the original side it has been our practice to have sales made in execution of mortgage decrees by auction, without the intervention of process of attachment.

11. It is a recognized principle that an executing Court is bound to give effect to the decree as it stands; and if the decree orders sale of the

property, the Court has no power to go behind the decree and investigate the existence or non existence of a prior mortgage or other claim, and

the decree-holder could only proceed against the property at his own peril: see Hukum Singh v. Raghubar Saran [1905] 27 All. 700. When

however such a decree-holder should consider it to be to his own advantage to attach the said properties, it has been held in some cases that such

attachment attracts with it the provisions of Order 21 Rule 58, Civil P.C. Such is the judgment of a Full Bench of the Rangoon Chief Court in the

case reported as Mg. Mra Tarn v. N. Kaing [1915] 8.L.B.R. 215. It was there stated that:

proceedings by way of attachment are not applicable to mortgage decrees. But if the decree-holder applies for and obtains an order for attachment

and property is attached, claims and objections to the attachment can be brought Under Order 21, Rule 58, Civil P.C., and such claims and

objections must be dealt with under that rule and the following rules prescribing the procedure for investigation of claims and objections.

12. My attention was drawn to some cases where there was in fact no attachment but a mortgage decree was sought to be executed in default of

the payment of the amount decreed, and in such cases, Courts have held that the provisions of Order 21, Rule 58, Civil P.C., do not apply. That

position seems to be quite clear. My attention has not been drawn to any similar case except a decision of one learned Judge of the Punjab Chief

Court in the case reported as Ratan Lal v. Bala Prasad [1918] 58 P.R. 1918 in which there was in fact also a further attachment, and where the

Courts held that claim petitions were not entertainable. *Mg. Mra Tarn v. N. Kaing* [1915] 8.L.B.R. 215. holds that in such a case a claim could be

entertained. In the present case, for reasons to be mentioned immediately, it is not necessary for me to decide this question. For, having regard to

the decisions of this Court, the landholder's claim in such a case could not be said to be one to enforce a charge within the meaning of Section

100, T. P. Act, whatever might be the result of the sale of the holding by the Revenue Court in execution of a decree for arrears of rent passed by

it.

13. The scope of Sections 5, 125 and 132, Estates Land Act, had to be considered by this Court in the decisions reported as *P. Suramma v.*

Suryanarayana Jagapathiraju [1919] 42 Mad. 114 and *Subbarayudu v. K. Venkataratnam* AIR 1928 Mad. 1074. In the earlier of the two cases it

was held that a charge for rent created by Section 5, Estates Land Act, was not a charge within the meaning of Section 100, T. P. Act, so as to

attract to it the provisions of Order 34, Civil P.C., though a sale, execution of a decree for rent, by a Revenue Court passes the property to the

purchaser free of all encumbrances except those specified in Section 125 of the Act: see also *V. K. Subbarayudu v. Kulluri Venkataratnam* AIR

1928 Mad. 1074. The effect of a sale by the Revenue Court in execution of a decree for rent obtained in such Court is that the purchaser gets the

holding free of certain encumbrances, u/s 125, Estates Land Act. This is specially provided for by the Act; see Sections 5, 125 and 132 of the

Act. But that should not be taken to make a "suit for rent" a suit to recover money on a mortgage" in the ordinary sense of the expression nor

make such a "rent decree" "a mortgage decree" as ordinarily understood. Decrees for rent passed by the Revenue Courts under the Estates Land

Act have some special potentialities. It should also be kept in mind that such decrees for rent could also be executed by the ordinary civil Courts in

which case, it has been held, that the sales would not be free of encumbrances, *Ballapragadda Venkata Lakshamma Garu v. N. Seetayya* AIR

1920 Mad. 183, and *K. Subbarayudu v. Kalluri Vnkataratnam* AIR 1928 Mad. 1074. The relationship of landholder and raiyat should also (it has

been held) continue till actual sale by Revenue Court: see Forbes v. Maharaj Bahadur Singh AIR 1914 P.C. 111 and Ballapragadda Venkata

Lakshmamma Garu v. N. Seetayya AIR 1920 Mad. 183 per Sadasiva Ayyar, J. See also the recent decision of a Special Bench of the Calcutta

High Court Krishna Pada Chatterjee Vs. Sm. Manada Sundari Ghose and Others, .

14. However when such a decree is sought to be executed by the Revenue Court and the decree-holder attaches certain immovable properties as

forming the holding of the raiyat concerned, there does not seem to be any specific provision of any enactment, so far as my attention has been

drawn which prohibits the entertainment of a claim petition by the Revenue Court. On the other hand, the provisions of Section 192, Estates Land

Act, would, prima facie, seem to make the claim sections of the CPC applicable to such execution proceedings, my attention not having been

directed to any specific provisions of the Estates Land Act which make such claim sections of the Code inapplicable to such cases. Devadoss, J.,

in the case reported as Periathambi Nayinar Vs. Gundhunada Nayinar and Others, was of that opinion, and I am prepared to follow that learned

Judge's decision.

15. The objection relating to jurisdiction of the lower Court to entertain the claim petition in question being unsustainable the learned advocate for

the petitioner argued that the finding of the Revenue Court on the merits was erroneous and not warranted by the exhibits filed in the case. My

attention was drawn to the chief exhibits filed in the case, and it was argued that they fell short of what is required u/s 145 of the Act to prove

recognition by the land holder of the transfer of a portion of a holding by a raiyat and acceptance of the transferee as the raiyat in respect of the

transferred portion. The relevant provisions of the Bengal Tenancy Act and some decisions under that Act were also referred to, but the question is

very largely, one of fact. The petitioner will, on the hypothesis, have a right of suit in the ordinary civil Court (as such a suit is not cognisable by the

Revenue Courts under the schedule attached to the Madras Estates Land Act), and I am anxious not to say anything which may cause any sort of

embarrassment in the trial of this question in the regular suit. All that I am now concerned to say is that, sitting as a Court of revision, and not of

appeal, I am not prepared to interfere with that finding in revision. The revision

petition is accordingly dismissed with costs.