(1935) 03 MAD CK 0012

In the Madras High Court

Chinnammal Achi APPELLANT

Vs

Chena Muna Saithakkathi Rowther and Others RESPONDENT

Date of Decision : 22-03-1935

Acts Referred:

Income Tax Act, 1961 — Section 46(2)

Citation : AIR 1935 Mad 882 : (1935) 42 LW 663

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—Defendant 5 is the appellant. In this case the question for decision is as to who has bettor title to an undivided one-fifth

share in the Ottakovil village, the suit property, whether the plaintiff or the appellant. According to the finding of the lower Courts this one-fifth

share belonged to Arunachalam Chettiar. This finding has to be accepted in second appeal, Arunachalam Chetfciar became an insolvent on 9th

September 1925. As the result of his insolvency the property became vested in the Official Receiver. It was sold by him on 17th January 1927 and

was purchased by the plaintiff. In 1924, that is, before the insolvency the entire village of which the suit property formed a share had been attached

in execution of a decree. After attachment the property was sold under Ex. 4 on 27th May 1927 and purchased by defendant 5. The sale

certificate, Ex. 5, is dated 9th November 1928. This attachment and sale was in connexion with proceedings taken under the Income tax Act. For

non-payment of the income tax the village was brought to sale. u/s 46(2), Income Tax Act, the amount of Income Tax has to be recovered from

the assessee as if ""it was an arrear of land-revenue."" Proceedings were taken by the Collector under the Revenue Recovery Act and the property was attached and sold as mentioned above.

2. It is argued that on account of the previous attachment of the property in 1934 no effective title can be given to it in favour of the plaintiff by the

subsequent sale by the Official Receiver. It is clear that though the property his been attached and sold under the Revenue Recovery Act the sale

cannot give a higher title to the purchaser than the owner of the laud himself would have given if he had alienated the property privately. This

appears to be clear from two decisions in Thammayya v. Ramanna 1926 Mad. 1161, and R.M.V.V.M. Chettiar Firm v. Subramania 1927 Rang.

289. It is only if the sale is for laud revenue that the purchaser gats a preferential title free from all incumbrances. Such a priority does not attach

itself to a sale for the enforcement of other dues even if the sale is held under the provisions of the Revenue Recovery Act. The appellant hare

cannot on the ground that the attachment and the sale were held under the provisions of the Revenue Recovery Act claim a better title than the

plaintiff.

3. The attachment will have only the effect of an ordinary attachment as in the case of ordinary sales held under the Civil Procedure Coda and

nothing more. In support of his contention the appellant relied upon a decision in Anantapadamanabhaswami v. Official Receiver of Secunderabad

1933 P.C. 134. In that case it was hold that an adjudication at Secunderabad which was a foreign Court operated in British India only under

private international law and, having regard to Section 64 of the Code did not affect the rights of the attaching creditor. It is argued that the

principle of that decision should be applied, and the rights of defendant 5 should prevail against the right of the plaintiff; but the judgment makes it

clear that that decision would be inapplicable if the adjudication took place in the British Court. The difference is pointed out by their Lordships of

the Privy Council at p. 413 of the judgment wherein they stated as follows:

It is irrelevant to consider what effect a British Indian adjudication order would have had on the appellant''s prior attachment.

3. Thereby suggesting that if the adjudication had taken place in British India the title obtained by the sale effected by an Official Receiver would

certainly have preference over the attachment and sale under the Civil Procedure Code. But the matter is made clearer in the following sentence:

Equally it is irrelevant to point out that a British Indian adjudication order would not be affected by the prohibitory provisions of Section 64 of the

Code as it is not a private transfer. Such an order operates vi statuti, but the foreign adjudication order does not operate in British India vi statuti,

but only under the rule of private international law.

4. This decision therefore is distinguishable and does not help the case of the appellant. It therefore follows that since the title to the property so far

as the appellant is concerned accrued only on 9th November 1928, that is, subsequent to the sale by the Official Receiver, the title which the

plaintiff obtained from the Official Receiver should have priority to the claims of defendant 5 though the property was attached as early as 1924. I

accept the opinion of the lower appellate Court and dismiss the second appeal with costs.

