(1935) 03 MAD CK 0062

In the Madras High Court

Case No : Civil Appeal No. 34 of 1933

CHINNAMMAL ACHI — APPELLANT

Vs

CHENA MUNA SAITHKKATHI ROWTHER AND OTHERS. — RESPONDENT

Date of Decision : 22-03-1935

Acts Referred:

Income Tax Act, 1961 — Section 46(2)

Citation : 158 Ind. Cas. 776 : (1935) 3 ITR 364

Judgement

The 5th defendant is the applicant. In this case the question for decision is as to who has better title on 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 Chettiar became an insolvent on September 9, 1925. As the result of this insolvency the property became vested in the Official Receiver. It was sold by him on January 17, 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. IV on May 27, 1927, and purchased by the 5th defendant. The sale certificate Ex. V, is dated November 9, 1928. This attachment and sale was in connection with proceeding then under the Income Tax Act. For non-payment of income tax the village was brought to sale. u/s 46(2) of the 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.

It is argued that on account of the previous attachment of the property in 1924, 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 has been attached and sold under the Revenue Recovery Act, the sale cannot give a higher title to the purchaser than the owner of the land himself would have given if he had alienated the property privately. This appears to be clear from two decisions in Thammayya v. Ramanna (98 I. C. 201) and R. M. V. V. M. Firm v. Subrahmania (5 R. 458; 105 I. C. 258). It is only if the sale is for land revenue that the purchaser gets 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 here 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. The attachment will have only the effect of an ordinary attachment as in the case ordinary sales held under the Civil Procedure Code, and nothing more. In support of his contention the appellant relied upon a decision in Anantapadmanabhaswami v. Official Receiver of Secundrabad (56 Mad. 405). In that case it was held that an adjudication at Secundrabad 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 the 5th defendant should prevail against the right of the plaintiff, but the judgment makes it clear that that decision would be in applicable 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 state as follows :- It is irrelevant to consider what effect a British Indian adjudication order would have had on the appellants prior attachment," 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."

The 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 November 9, 1928, that is, subsequently to the sale by the Official Receiver, the title which the plaintiff obtained from the Official Receiver should have priority to the claims of the 5th defendant 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.

Appeal dismissed.