

(1952) 03 MAD CK 0021

In the Madras High Court

Case No : Second Appeal No. 959 of 1948

Chockalingam Chettiar

APPELLANT

Vs

Sivakolandu Achi

RESPONDENT

Date of Decision : 20-03-1952

Acts Referred:

Madras Estates Land Act, 1908 — Section 125

Citation : AIR 1953 Mad 234 : (1952) 65 LW 1213 : (1952) 1 MLJ 770

Hon'ble Judges : Krishnaswami Nayudu, J

Bench : Single Bench

Advocate : T.S. Santhanam, for the Appellant; R. Viswanathan, for K.V. Ramachandra Ayyar, for the Respondent

Judgement

Krishnaswami Nayudu, J.—The plaintiff is the appellant and he sued for possession of the suit properties on the ground of his purchase in a

revenue court auction held in execution of decree in summary suits filed by the land-holder for recovery of arrears of rent. There are three items of

property involved: (1) R.S. No. 315/1 measuring 33 cents dry land, (2) R.S. No. 286/1 measuring 26 cents nanja and (3) R.S. No. 286/12

measuring 42 cents dry land. Under Ex. P. 3, dated 7th August 1945, in execution of summary suit No. 52 of 1933, the plaintiff was granted a sale

certificate in respect of item No. 1, and Ex. P. 2 is the sale certificate dated 27th January 1945 granted as purchaser in the sale held in pursuance

of the rent decrees in S.S. No. 136 of 1933 in respect of items 2 and 3. The claim to possession is on the basis that the purchaser at an auction in

a rent sale is entitled to permanent title and he holds it free from the encumbrances. The defendant claimed to purchase these properties under a

private sale Ex. D. 3 dated 16th September 1943, from the owners of the land.

2. The lower appellate Court held that in so far as item 1 is concerned Ex, P. 3 showed that the purchase was in a rent sale held in a revenue court

and the decree is for arrears of rent and therefore the sale passed the property to the purchaser free of all encumbrances except those specified in

Section 125, Madras Estates Land Act. The defendants claim as purchasers of item 1 not being subject to any encumbrance of the category of

those that are so excepted u/s 125 the sale of item 1 in favour of the appellant was upheld and a decree for possession was granted in respect of

that item. But as regards the other two items, namely items 2 and 3, it was held that the rent decree in S.S. No. 136 of 1933 was not for any

arrears of rent or interest but was only for costs and the execution petition No. 220 of 1944 on the file of the Deputy Collector, Tanjore showed

that the sale was in pursuance of the decree for costs alone. The lower appellate court therefore held that no charge was created under the Madras

Estates Land Act in respect of costs u/s 5 of the Act. The charge under that section being only for rent and interest thereon and not for costs, the

lower appellate court held that the appellant was not entitled to have priority over the defendants' purchase.

3. Section 125 of the Madras Estates Land Act states :

When a holding or part of a holding is sold for arrears due in respect thereof, the purchaser shall take, subject to any right or interest which the

ryot has created therein with the land-holder's permission in writing registered and subject also to any encumbrances created before the passing of

this Act but not subject to any arrears of rent due in respect of the holding before the date of sale or to interest on such arrears, whether a decree

has been obtained or not for such arrears of interest-

4. In this case, the appellant is no doubt the purchaser of the holding. But the question is whether the holding was sold for arrears as specified in

the said provision. The arrears would necessarily mean arrears of rent and the priority that is given to a purchaser u/s 125 could only enure to him if

he is a purchaser of the holding and the said holding is sold for arrears, meaning arrears of rent. The sale in this case is not a sale for arrears of rent

but for costs, and on a reading of Section 125 it could not be held that the appellant would be entitled to seek the benefit of Section 125. Apart

from that, Section 5 provides :

The rent of ryoti land together with any interest which may be due in respect thereof shall" be a first charge upon the holding and upon the

produce of the holding or any part thereof, provided that, if gathered, the produce is in the custody or possession of the ryot or deposited on the

holding or on a threshing floor or place for treading out grain, or the like, whether in the fields or within the homestead.

The right of the purchaser to hold the property purchased for arrears u/s 125 free from the encumbrances except those created before the passing

of the Act is given in pursuance of the charge already created u/s 5 of the Act for rent and also for interest. If the decree was for interest alone and

not even rent, then it may be contended that the appellant would be entitled to the benefit u/s 125. But the decree is neither for rent nor for interest

and there being no charge -- the only charge that is created by the statute being" in respect of rent and interest -- it cannot be said that a purchaser

of a holding in pursuance of a decree which is not either for rent or interest or both would be entitled to contend that he is a charge-holder and

therefore entitled to hold the property free from the encumbrances except those created by the Act.

5. Learned counsel for the appellant relied on the provisions of Sections 126 and 127. Section 126 which is as follows :

The portion of the holding brought to sale by the land-holder shall be, as nearly as possible, equal in value to the amount of arrears due and costs

only provides that the extent of the property that is to be brought to sale may also cover for the costs, which however cannot be taken to mean that

a charge for costs is also created though it is not included in Section 5 of the Act. Similarly, Section 127 which provides rules for disposal of the

sale proceeds says that in disposing of the proceeds of sale, there shall first be paid to the land-holder the costs incurred by him in bringing the

holding to sale and in the next place, the amount due to him for arrears and interest upto date of payment. The costs of sale incurred by the land-

holder are not costs of a sale held in pursuance of a decree for sale, but by distraint and other means provided for in the Act with the help of the

Collector. In any event, even this provision could not be understood as providing a charge for costs, the same not having been included in Section

5 of the Act where the charge is confined to the rent and to any interest accruing due on the rent. I am therefore of opinion that a purchaser of a

holding in execution of a rent decree for costs would not be entitled u/s 125, Madras Estates Land Act, to hold the property free from the

encumbrances which are created before or after the passing of the Act. Section 125 will have no application to such a purchaser.

6. There is a memorandum of cross objections. That arises out of the contention of the respondent that even the purchase by the appellant was

benami for the judgment-debtors in O.S. No. 165 of 1944. That was raised as an issue at the trial and the learned District Munsif went into" the

question and gave a finding that the purchase by the plaintiff was only benami for Nadimuthu and his brothers and that the purchase could not

therefore be up held and in any event not binding on the defendant. The appellate court has not gone into the question and was content with

disposing of the appeal on the question of law just dealt with. I consider this is a case which ought to be sent to the lower appellate court for a

finding on the issue which was decided by the trial court but was not dealt with by the appellate court. The appeal is remanded for a finding on

issue 1. Time for return of the finding one week after the reopening of this court.