
(1936) 10 MAD CK 0020
In the Madras High Court

Elavarthi Venkatanarasimharaju

APPELLANT

Vs

M. Siddha Chetty and Others

RESPONDENT

Date of Decision : 27-10-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 58

Citation : AIR 1937 Mad 349 : (1937) 45 LW 661 : (1937) 1 MLJ 399

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—A number of questions, some of them by no means free from doubt or difficulty, have been raised in the course of the

arguments in this second appeal. I propose to refer to most of them, but it seems to me sufficient for the purpose of the decision of this second

appeal to express a final opinion upon only some of them. The other questions I prefer to leave open, because the scheme of the Estates Land Act

in relation to claims preferred on the analogy of Order 21, Rule 58, Civil Procedure Code, is very obscure.

2. The properties in suit are ryoti lands situate in a proprietary village, and in 1904, the tenancy right in them belonged to one Ragaviah and his son

Muthuswamy Aiyah. These two persons had executed a mortgage Ex. A, in favour of the first plaintiff's father on the security of these lands.

Muthuswamy Aiyah died in 1911 leaving a widow Guruvamma. Raghaviah died in 1914 and this case has proceeded on the footing that all the

lands passed by survivorship to Raghaviah on Muthuswamy Aiyah's death. It is stated that Raghaviah left a will whereby he bequeathed the suit

properties to his daughter Subbamma but that will has not been produced. We however find that in about a month after Raghaviah's death, there

was an arrangement between Guruvamma and Subbamma (by Exs. D and E) whereby Guruvamma was given 10 1/2 guntas of land and the rest

was taken by Subbamma. It is not clear whether this was only a notional division or whether there was a physical separation of the properties

taken by them respectively. The evidence however shows that in the village accounts the whole land had been recorded as in the possession of

Guruvamma and the lower appellate Court has accepted the suggestion made on behalf of the defendants that the patta for the whole land stood in

Guruvamma's name.

3. It is clear from Ex. IT that the proprietor knew that Subbamma was the legal representative of Raghaviah. Whether he knew his alleged will or

not, it is not clear. I therefore see no reason to think that in the matter of the registry of the lands in Guruvamma's name the landlord must have

acted in ignorance of Subbamma's right; nor do I see any reason to suspect any fraudulent intention on his part. For all that appears in the

evidence, Subbamma and Guruvamma and one Nageswara Aiyah, a brother of Guruvamma, seem to have lived together and lived so amicably

down to the end that at her death Subbamma bequeathed all her properties to this Nageswara Aiyah. The probabilities therefore are that

Nageswara Aiyah was looking after the properties on behalf of both Guruvamma and Subbamma and that as for some reason the properties had

been entered in Guruvamma's name in the village registers, nobody had any objection to its so continuing. It is significant that even after

Nageswara Aiyah got the properties under Subbamma's will he took no steps to obtain the registry of that portion of the property in his name. On

the other hand, when about a year after Subbamma's death, both Guruvamma and Nageswara Aiyah joined in selling all the properties under Ex.

K they accepted their liability for the decree passed under Ex. II and also for the arrears of rent which afterwards came to be covered by the

decree Ex. II-A. I have therefore come to the conclusion that the lands must have been entered in Guruvamma's name and patta issued in her

name in respect of the whole extent that belonged to Raghaviah with the knowledge and in all probability with the consent of Subbamma and

Nageswara Aiyah.

4. Between 1915 and 1928, the proprietor obtained six decrees for rent (Ex. II

series). To only one of those suits did he make Subbamma also a party (Ex. II). Even in that suit, she died during the pendency of the suit and it does not appear that any legal representative was brought on record.

The amendment of the rule which enables a Court to dispense with the legal representative of an ex parte defendant had not then been introduced

and it is therefore difficult to accept the suggestion of the learned District Judge that the mere fact of Subbamma having been impleaded in that

litigation will give to that decree a validity which it otherwise will not have, when admittedly she died during the pendency of the litigation and no

legal representative of hers was brought on the record. But I do not think it necessary to canvass this position at greater length, because for

reasons already given I am of the opinion that in all the above circumstances the landholder was justified in treating Guruvamma as sufficiently

representing the estate for the purpose of the suits.

5. It is true that prior to the Estates Land Act it was the duty of the landholder to find out the person really entitled to the ryoti interest and that u/s

147 of the Estates Land Act of 1908 the landholder was relieved in respect of this duty only in cases of transfers but not in respect of succession.

The amendment recently introduced so as to cover cases of succession also has no application to the circumstances of this case. But in determining

whether the landlord has properly discharged his duty in finding out the person whom he must treat as a tenant for the purpose of issuing pattas and

instituting suits for rent, the principle recognised in *Ramaswamy Chettiar v. Oppilamani Chetty* (1909) 19 M.L.J. 671 : ILR 33 Mad. 6 and *Bachu*

Soorayya v. Toomuloori Chinna Anjaneyalu (1918) 36 M.L.J. 106, may well be taken into account. The result is that if the landlord finding a

person in possession bona fide believed that person to be legally in possession as heir and that person further happens to be entitled to an

undivided share in the holding it will be scarcely fair to permit other persons entitled to the remaining undivided shares to treat the proceedings

taken against the registered holder as a nullity so far as they are concerned, when with the knowledge of the landlord's conduct they have chosen

to stand by. I would uphold the learned Judge's view in respect of Exs. II and II-A on the ground above stated and not on the ground adopted by

the learned Judge.

6. The above point of view will make a material difference in the test to be applied in respect of the decrees Exs. II-B, II-C and II-D. The learned Judge has held that these three decrees are nullities because they were obtained only against Guruvamma after the properties had been sold away under Ex. K and Guruvamma had presumably ceased to be in possession. I have grave doubts as to whether the question of the validity of the decrees sought to be executed can at all be raised in these proceedings if they are to be regarded as analogous to claim proceedings. But as it is possible to regard the present suit as a mere declaratory suit independent of the provisions of Order 21, Rule 63, Civil Procedure Code, I do not wish to base my decision on this narrow ground. If I am right in the opinion that prior to the date of Ex. K. Guruvamma must be treated as a registered pattadar in respect of the whole extent of the holding and not merely of her 10 1/2 guntas, it will follow that the transferees who took the property under Ex. K will be governed by the provisions of Section 147 of the Estates Land Act. Mr. Ramaswamy Aiyar who appeared for the respondent argued that if proceedings had been taken against Nageswara Aiyah in respect of his share of the holding the principle of Section 147 would be applicable but it will not avail in respect of proceedings taken against Guruvamma. This argument ignores the fact that for at least a year after Subbamma's death Nageswara Aiyah who had become entitled to Subbamma's share as legatee had not taken any steps to bring his rights to the notice of the landlord though as Guruvamma's brother living with her and looking after her affairs he must undoubtedly have been made aware that the landlord was treating Guruvamma as the registered pattadar in respect of the whole extent of the holding. I am therefore not prepared to draw a distinction between so much of the holding as belonged to Guruvamma which formed the subject-matter of the conveyance under Ex. K and the rest of the holding which belonged to Nageswara Aiyah which also formed the subject-matter of the conveyance under Ex. K. The reference in Ex. K to the decree in S. No. 1163 of 1915 and to the arrears due for the three faslis which presumably formed the subject-matter of the decree in S. No. 1470 of 1917 undoubtedly put the vendees on notice of the liability of the property purchased by them for payment of rent both past and future. If for several years after this purchase these vendees did not take steps u/s 147 to get themselves registered as

pattadars, I do not see any justification for punishing the landlord for his ignorance of the transfer. It is obvious that when it came to his knowledge

he had no objection to implead these transferees as well in his suit as he did in Ex. II-E. I am accordingly of opinion that the second appeal must be

allowed to the extent of declaring that the appellant is entitled to execute not only the decrees, Exs. II, II-A and II-E, but also the decrees, Exs. II-

B, II-C and II-D.

7. As the memorandum of objections has not been pressed I need not say more than to point out that the above reasoning will itself suffice to

justify the dismissal of the memorandum of objections even if it had been pressed.

8. The other point raised in the second appeal is whether the learned Judge was right in holding that the appellant can bring the properties to sale

only subject to the charge in plaintiff's favour to the extent of the amount due under Ex. A. On this point, I am of the opinion that the learned

Judge's conclusion is justified by Section 125 of the Estates Land Act. It is true that the mortgage Ex. A has been taken into account in Ex. C, a

later mortgage executed by Subbamma in 1914, and Ex. C is more than a mere renewal of Ex. A. But on the principle recognised in Velayuda

Reddi v. Narasimha Reddi (1916) 32 M.L.J. 263 and Sreekanta Sundararamiah and Others Vs. Tadikamalla Venkatasubbiah and Others, , it

seems to me proper to recognise in favour of the plaintiffs the benefit intended to be conferred by Section 125 to the extent of Ex. A. I do not feel

compelled to treat Ex. C as extinguishing Ex. A to the detriment of the mortgagee : nor does it seem to me to make any difference that a decree

had been passed on foot of Ex. C. It was recognised in Venkatarayudu v. The Maharajah of Pithapuram (1927) 54 M.L.J. 138 : ILR 51 Mad.

774, that a decree on the mortgage will be as much an encumbrance within the meaning of Section 125 as the original mortgage itself.

9. Mr. Ramadoss pointed out that at the present date no suit can be maintained on Ex. A and he contended that on the principle of the decision in

Mahomed Ibrahim Hossain Khan v. Ambika Prasad Singh (1912) M.L.J. 468 : L.R. 39 IndAp 68 : ILR 39 Cal. 527 all rights under Ex. A must

be deemed to have come to an end. This position does not appeal to me to be tenable. Ex. A had undoubtedly been acknowledged in Ex. C and

the suit brought by the plaintiffs on Ex. C had ripened into a decree. No question therefore arises of the plaintiffs being obliged to bring a suit on

Ex. A again. The case is not analogous to that of a puisne mortgagee having been left out from a suit instituted by the prior mortgagee against his

mortgagor. It has often been pointed out that the charge created in favour of the landholder by the Estates Land Act in respect of rent is not in the

nature of a mortgage and there is no justification for insisting that in a suit by a mortgagee whose mortgage would be saved by Section 125 of the

Estates Land Act, the landholder should be impleaded as a party. I am of opinion that the decision of Krishnan, J., in Sreekanta Sundararamiah

and Others Vs. Tadikamalla Venkatasubbiah and Others, lays down the correct principle, if I may say so.

10. I understand that during the pendency of this litigation, the mortgagee had brought the properties to sale in execution of his mortgage decree

and the landholder has brought the properties to sale in execution of his rent decrees. It does not seem to me desirable to leave this litigation merely

with a declaration of the rights of the parties as they stood at the date of the institution of the suit, because it is bound to lead to further litigation.

This is just one of the class of cases where the Court will be justified in taking notice of the events that have happened during the pendency of the

suit. It therefore seems to me best in the circumstances to modify the lower appellate Court's decree to the extent above indicated but at the same

time send the case back to the Court of first instance for the rights of parties to be worked out in accordance with the principle laid down in

Sreekanta Sundararamiah and Others Vs. Tadikamalla Venkatasubbiah and Others, . In the circumstances I am not disposed to make any order

as to costs either in the appeal or in the memorandum of objections.

11. I only wish to make a passing reference to some of the other questions raised by Mr. Ramadoss though as I have already indicated I do not

propose to express any final opinion upon them. It has no doubt been held in Venkatarayudu v. The Maharajah of Pithapuram (1927) 54 M.L.J.

138 : ILR 51 Mad. 774 and Suryanarayana v. Ramachendrudu (1912) M.L.J. 468 : L.R. 39 IndAp 68 : ILR 39 Cal. 527 that there is nothing in

the Estates Land Act to exclude the applicability of the claim procedure contained in Rules 58 to 63 of Order 21, Civil Procedure Code. It is

however noticeable that while Section 89 of the Estates Land Act specifically provides for claims by third parties in cases of distraint of moveable

property there is no provision in the body of the Act or in the schedule to applications corresponding to those under Order 21, Rule 58, Civil

Procedure Code. Mr. Ramadoss raised the question whether assuming the procedure by way of claim petition is to be recognised in connection

with the execution of rent decrees it could have been the intention of the legislature that the Civil Court should in a suit under Order 21, Rule 63

have power to set aside the order passed by a Revenue Court on a claim petition. It is however clear that a suit of the kind contemplated by Order

21, Rule 63, Civil Procedure Code, cannot be instituted in a Revenue Court because no such suit is referred to in schedule B of the Estates Land

Act. Mr. Ramadoss conceded that, though not exactly as a suit under Order 21, Rule 63, a suit for similar relief may lie in a Civil Court as one for

declaratory relief; but the particular basis on which the suit is to be maintained will have a material bearing upon the question of the period of

limitation applicable thereto, namely, whether the one year's rule of limitation is applicable to such suits or not. It will perhaps be more satisfactory

if some of these questions are specifically dealt with by the legislature, but as I have already said, it is not necessary for the purpose of the disposal

of the appeal to express any final opinion upon them.

12. Leave refused.