

(1915) 10 MAD CK 0026
In the Madras High Court

Gajjala Yella Reddi and Another

APPELLANT

Vs

Syed Muhamadalli alias Dada Peeru and Eleven Ors.

RESPONDENT

Date of Decision : 19-10-1915

Acts Referred:

Citation : (1916) ILR (Mad) 1026

Hon'ble Judges : Spencer, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—This is an appeal by the decree-holders, who were the mortgagees of the property against the order of the Subordinate

Judge, dated 30th September 1913, made on an application of the judgment debtors asking that an account be taken of the receipts and

disbursements in respect of the income of the property, that the amount so settled be entered in satisfaction of the decree, and that the balance due

by the decree-holders who were in possession of the property be paid to the petitioners, that is, the judgment-debtors and also that a direction be

made for delivery of the property to them.

2. A Commissioner was appointed to go into the accounts and to report to the District Judge as to the receipts and expenditure. Upon receipt of

the report, the District Judge went into the matter and arrived at the finding that a sum of Rs. 14,000 and odd should be credited against the

amount of the decree.

3. The first objection raised before us was that no credit should have been allowed for the amount received by the decree-holders because such

receipts were not certified to the Court within ninety days after they were received. The decree-holders remained in possession of the property

under the terms of the decree and the decree provided that every year they should render account and give credit for any surplus that might be in

their hands after meeting the necessary expenses. They remained in possession for more than eight years though the decree expressly provided for

their remaining in possession only for six years. The question of limitation is whether such receipts by mortgagee decree-holders in possession of

the property is ""money payable under a decree paid out of Court or adjustment in whole or in part to the satisfaction of the decree-holder."" Money

so received cannot in any sense be said to be money payable under the decree within the meaning of this rule nor can it be said to be an adjustment

between the decree-holder and judgment-debtor. There was in fact no adjustment. The simple fact is that the mortgagee decree-holders being in

possession are to account for the money received by them, and if any money is still payable to them, they will be entitled to its payment. On the

other hand if their decree had been satisfied, the judgment-debtors are entitled to delivery of possession of the property and also to any balance of

the money that may remain in their hands. We think this point is covered by a dictum in a Full Bench decision of this Court. Vaidhinadasamy Ayyar

v. Somasundram. Pillai ILR (1905) Mad. 473. The observation which applies to the case is to be found at page 478 where it is laid down that the

special provision for the purpose of limitation would not make the sums received by a usufructuary mortgagee decree-holder in possession, money

payable under a decree within the meaning of Section 258 of the old Code corresponding to Rule 2, Order XXI. Our attention has also been

drawn to Ramasami Naik v. Ramasami Chetti I.L.R 30 (1907) Mad. 255. That was not a case in which the decree-holder was in possession of

the property under the terms of the decree and the moneys sought to be credited by the judgment-debtor were not the income from the property

received by the decree-holder in possession of it; but it appears that at page 265, a reference is made to the decision in Vaidhinadasamy Ayyar v.

Somasundram Pillai ILR (1905) Mad. 473 and there it is stated that according to that decision, the amount realized by a usufructuary mortgagee

remaining in possession after a decree for sale cannot be applied in satisfaction of the decree amount unless certified u/s 258 of the old Civil

Procedure Code. It seems to us that this proceeds upon a misapprehension of what is laid down in Vaidhinadasamy Ayyar v. Somasundram Pillai

ILR (1905) Mad. 473 to which we have already referred. We have also been referred to Nistarini Dasi v. Kazim Alini (1910) 12 C.L.J. 65 where

it is laid down that in a suit by the decree-holder for an order absolute for sale, the judgment-debtor is entitled to have an account taken of the

receipts by the decree-holder. That decision does not apply to the facts of this case. We are of opinion that the plea of limitation is not sustainable.

[The remaining portion of the judgment deals with questions of fact, and has therefore been omitted from this report.]