(1928) 01 MAD CK 0044

In the Madras High Court

Gandham China Brahmayya APPELLANT

Vs

Pappusetty Gangulu and Others RESPONDENT

Date of Decision : 05-01-1928

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 37A, 38

Citation : 110 Ind. Cas. 114 : (1928) 27 LW 420 : (1928) 55 MLJ 33

Judgement

1. The sale was confirmed by the Revenue Divisional Officer on 9th August 1918. There is no doubt that the Revenue Divisional Officer is a "Collector" within the meaning of the Sections 37-A & 38 of the Revenue Recovery Act. See Madras Act I of 1891, Section 3, Clause 6 taken with Regulation VII of 1828. If he was a Collector within the meaning of Section 38, he is the only officer to confirm the sale or to set aside the sale acting under the proviso to Section 38, Clause (3). He has confirmed the sale and did not choose to exercise his power under the proviso. The result is, the sale has become final and unimpeachable. Neither the District Collector acting under the general powers of revision under Regulation VII of 1828, not the Board of Revenue has any jurisdiction to interfere with the sale. The provisions of Madras Act II of 1864 are complete and cannot be affected by a general Act like Regulation VII of 1828. See Sundaram Aiyangar v. Ramaswami Aiyangar ILR (1918) M. 955 : 35 M.L.J. 177 The order of the Collector (Ex. A) is null and void.

2. The plaintiff''s suit for declaration is maintainable as the 3rd defendant was not in possession at the date of the suit.

3. The appeal against order is dismissed with costs.

