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(1947) 02 MAD CK 0020

In the Madras High Court

Gonthina Pardhasaradhi APPELLANT

Vs

Sri Marelle Venkatachalani Pantulu RESPONDENT

Date of Decision : 28-02-1947

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 42

Citation : (1947) 60 LW 726 : (1947) 2 MLJ 387

Hon'ble Judges : Bell, J

Bench : Division Bench

Judgement

Bell, J.—This is a petition u/s 25 of Act IX of 1887 against a decree passed in the Court of the District Munsiff, Yellamanchilli.

2. The successful claim was for Rs. 23-13-6 being the amount of kattubadi with interest, for certain faslis, due from the defendants to the plaintiff.

The first defendant has remained ex parte and the third defendant who is the petitioner here says that a particular piece of land in which he is

interested was sold for arrears of land revenue due to Government on 15th November, 1940 and that he purchased it. He contends that he is not

liable to pay kattubadi to the zamindar because of Section 42 of the Revenue Recovery Act of 1864, which provides that all lands brought to sale

on account of arrears of revenue shall be sold free of all incumbrances.... The petitioner says that the liability to pay kattubadi to zamindar is an

incumbrance within the meaning of Section 42 and that as auction purchaser he is now and will be for ever free from such a liability. The word

incumbrance"" is not defined in the Revenue Recovery Act. Even in the Transfer of Property Act there is no definition of the word. Feeling that a

little research into the matter might be helpful I asked learned counsel at the end of their first argument to consider the matter a further and I am

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grateful to them for their industry. Mr. Suryanarayana, who appears for the petitioner, has, however, been unable to unearth any helpful definition

of the word ""incumbrance"" from the Madras Acts. Section 159 of the Bengal Tenancy Act at first sight seems to assist because it says that a

purchaser of a tenure or holding sold in execution of a decree for arrears due in respect thereof may be able to avoid the incumbrances therein, but

Section 161 of the same Act merely defines the term ""incumbrance"" as used with reference to a tenancy within the meaning of that Act. Sub-

section (16) of Section 3 of the Punjab Land Revenue Act of 1887 says that ""incumbrance"" means a charge upon a claim against land arising out of

a private grant or contract. Clearly this cannot be considered as appropriate with regard to the right of collecting kattubadi. It has been held in

Subbaraya Goundan v. Ranganatha Mudaliar (1915) 30 M.L.J. 387 : ILR Mad. 93 that by virtue of an assignment from Government of the right

to land revenue the inamdar does not acquire a charge upon the land. ''It is clear that this right is a personal one but not in the sense of a charge or

mortgage or similar burden on land. One might say that encumbrances in this regard must be those which arise out of the transactions which are the

acts of parties : see Pradyoti Kumar Tagore v. Gopi Krishna Mandal I.L.R.(1910) Cal. 322. The reasoning and the conclusion, therefore, of the

learned District Munsiff would appear to be sound. The petition is dismissed with costs.

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