
(1927) 05 MAD CK 0016
In the Madras High Court

Jagannatha Pillai and Others

APPELLANT

Vs

Kathaperumal Pillai and Others

RESPONDENT

Date of Decision : 06-05-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92
Madras Estates Land Act, 1908 — Section 192

Citation : AIR 1927 Mad 1035 : (1928) ILR (Mad) 76 : (1927) 26 LW 572 :
(1927) 53 MLJ 688

Hon'ble Judges : Jackson, J;Devadoss, J

Bench : Full Bench

Judgement

Devadoss, J.—The plaintiffs' suit is for cancellation of a revenue sale of the plaintiff items on the ground that there was fraud and material

irregularity in publishing and conducting it. Both the Lower Courts have found on the merits in plaintiffs' favour and set aside the sale. The legal

representatives of the 1st defendant, the landholder, have preferred this Second Appeal.

2. The vakil for the appellants raises the contention that no suit lies to set aside a sale in execution of a rent decree on the ground of fraud or

material irregularity in publishing and conducting the sale as a suit is barred under Order 21, Rule 92, Civil Procedure Code. This point was not

raised in the Lower Courts. But we allowed it to be raised as it affected the maintainability of the suit. The argument is that the provisions of the

CPC of 1882 with a few exceptions are made applicable to the proceedings under the Estates Land Act and therefore a suit to set aside a sale is

barred u/s 312 of the old Code corresponding to Order 21, Rule 92 of the present Code, and a sale can only be set aside u/s 311 corresponding

to Order 21, Rule 90 of the present Code."

3. Section 192 of the Estates Land Act provides that, with a few exceptions, the provisions of the CPC shall apply to all suits and other

proceedings Under the Act so far as they are not inconsistent therewith. The question is, is a suit in a Civil Court for setting aside a revenue sale

held in execution of a rent decree barred either by reason of Section 312 or by reason of the provisions contained in the Estates Land Act? By

S.189 of the Act only certain classes of suits which are mentioned specifically in Schedules A and B are exempted from the cognizance of the Civil

Court. The present suit is not one of those specifically mentioned in Parts A and B of the schedule. When the Act specifically says that the right of

action in a Civil Court is not taken away except in the cases specifically mentioned in the Act it would be opposed to the principles of construction

of a special Act to hold that it takes away the right of a party to seek redress in a Civil Court in other cases. The right of a person to seek relief in a

Civil Court is a common law right and as long as he can show cause of action he can bring a suit for redress. In this case on the allegations made

by the plaintiffs, they have a cause of action and unless the suit is expressly barred by some provision of the Estates Land Act they would be

entitled to seek relief in the ordinary Civil Courts of the land.

4. It is urged for the respondents that Section 131 provides for setting aside the sale on payment of the purchase money in full, and Section 124

does not contain any provision for confirmation of the sale. u/s 312 of the CPC the Court is required to pass an order confirming the sale if no

application u/s 311 is made or if such application is made and disallowed. u/s 124 the Collector is required to issue a certificate of sale to the

purchaser if no application has been made u/s 131 or if an application has been made and rejected. As pointed out by Mr. Muthukrishna Aiyar,

there is no remedy to the ryot if the Collector refuses to set aside the sale, for no appeal is provided against an order u/s 131. In the case of an

order u/s 312 an appeal is provided for by Section 588, Clause 16. It is by reason of Section 132 that the provisions of Chapter VI are made

applicable to the execution by a Revenue Court of any decree for arrears of rent. When no remedy is provided by the Act itself against the order

u/s 131 and when it is not specifically enacted that the order of the Collector

shall be conclusive, is it proper to hold that the party against whom the order is made has no remedy at all? Unless there be a specific provision in the Act itself, it would not be right to hold that the unsuccessful party is without a remedy.

5. It is urged by Mr. Muthukrishna Aiyar that even if S.312 be held to be a bar to a suit to set aside a revenue sale it does not bar a suit which is based upon fraud, for under the CPC of 1882 an application u/s 311 to set aside a sale could be made only on the ground of material irregularity in publishing and conducting it. Under the present Code Order 21, Rule 90, an application could be made on the ground of fraud as well. It is unnecessary to consider this point at length as we are satisfied that the right of suit in a Civil Court to set aside a revenue sale is not taken away expressly or impliedly under the provisions of the Estates Land Act. Section 189 of the Estates Land Act takes away the jurisdiction of the Civil Court in the case of suits and applications of the nature specified in Parts A and B of the schedule to the Act, and there is no warrant for enlarging the scope of the exemption to other suits.

6. In *Rajagopala Aiyar v. Ramanujachariar* ILR (1923) M 288 : 1923 46 MLJ 104 it was held that a sale held in execution of a decree without notice as required by Order 21, Rule 22 was a nullity. Could it be said that in the case of a revenue sale the non-compliance with the provisions of Order 21, Rule 22 by a Revenue Court would not make the sale a nullity? and if it is a nullity, what is the remedy of the aggrieved party? The remedy could only be by resorting to a Civil Court for setting aside the sale. In the case of a sale by a landholder under the summary proceedings under Sections 111 and 118 of the Estates Land Act it was held that the Revenue Court had no jurisdiction on an application by the landholder to set aside the sale on the ground of irregularity in the publication and conduct of the sale and, if such an order was passed. the purchaser could institute a suit in the Civil Court for a declaration that the order is ultra vires and void. Vide *Agnihotram Jagannadha Charyulu Vs. Sri Raja Bommadevara Satyanarayana Varaprasada Rao Bahadur and Another*, . The observations of the learned Judges who decided that case with regard to suits to set aside sales in execution of rent decrees are only obiter and with very great respect I am unable to agree with them. On a full

consideration of the relevant sections of the Estates Land Act, I have no hesitation in holding that a suit in a Civil Court is not barred by reason of the provisions of the Estates Land Act or by reason of the provisions contained in Section 312 of the old Code corresponding to Order 21, Rule 92 of the present Code, which are applicable to the proceedings in execution of a rent decree.

7. There is no other point in the Second Appeal, which fails and is dismissed with costs of 1, 2 and 4 to 6 respondents.

Jackson, J.

8. In execution of a decree by a Revenue Court, the first defendant brought the property of the 1st plaintiff to sale. The 2nd plaintiff, his son, applied a month after the sale for two weeks' time in order to deposit the balance of the decree amount. This was refused (Ex. II) So plaintiffs have brought this suit in the Munsif's Court to set aside the sale as fraudulent.

9. The Lower Courts have decreed the suit. The question raised in Second Appeal is whether, having regard to Section 192 of the Madras Act, I

of 1908, any such suit can lie. Section 192 enacts that subject to the other provisions of the Act, the provisions of the CPC shall apply to all

proceedings under the Act, so far as they are not inconsistent therewith. It specially provides in Sub-clause (a) that (among other sections) Order

21, Rule 83, the postponement of sales, Order 21, Rule 89, the deposit of the sale amount, Order 21, Rule 91, cancellation if judgment-debtor has

no saleable interest, shall not apply. Order 43 is also not applicable.

10. It is argued that because Order 21, Rule 92 is not specially excepted, therefore it applies. Under Sub-clause (3) of that rule, no suit to set

aside an order confirming a sale shall be brought by the person against whom the order is made. Therefore the present suit is incompetent. In

support of this argument, the appellant relies upon obiter dicta in Agnihotram Jagannadha Charyulu Vs. Sri Raja Bommadevara Satyanarayana

Varaprasada Rao Bahadur and Another, .

11. There the question was whether an order under Order 21, Rule 90 could be passed in the case of a sale not under a decree but under the

special provisions of the Act, Sections 111, 118 and 124. The learned Judges remark in passing that if the sale had been in execution of a decree

passed by the Revenue Court Order 21, Rule 92 would, by the force of Section

192 of Act I of 1908 have become applicable. Section 192 of

Madras Act I of 1908 no doubt makes Rules 90 and 92 applicable for these rules are not excepted in Section 192(a).

12. With the greatest respect, now that this point has been substantially in issue and fully argued, I am not prepared to hold that Order 21, Rule 92

must be applicable merely because it is not in terms made inapplicable by Section 192(a).

13. Section 192 provides that where the procedure proper to any proceeding is not laid down by the provisions of the Act, it can be looked for in

the Code of Civil Procedure. In the matter of sales in execution of a decree of the Revenue Court Section 132 lays down that the provisions of

Chapter VI shall be applicable. In other words a ryot whose holding is sold up summarily u/s 77(ii) and a ryot whose holding is sold up in

execution of a decree of a Revenue Court, shall each alike undergo the procedure set forth from Section 111 to Section 131. It seems

inconceivable that the Madras Legislature after fully providing for the procedure in this chapter, should have intended to import as a concurrent

procedure, a maimed form of that prescribed under 0.21.

14. Thus under the Madras Act, the vendor is given a certificate u/s 124, and the vendee, if aggrieved, can sue before the Collector u/s 213, which

also specially reserves under Sub-clause (2) his right of action in a Civil Court unless such action is barred in Schedule A; under the Code of Civil

Procedure, the sale is confirmed and becomes absolute under Order 21, Rule 92; there is an appeal for the aggrieved party under Order 43; and

no suit lies.

15. Under the procedure which, as now suggested, Section 192 is supposed to import, the sale is confirmed, and the aggrieved party has no

appeal because Section 192 excludes Chapter (Order)43, and no suit, because Order 21, Rule 92 precludes a suit.

16. Surely it is plain that the Madras Act, instead of introducing such anomalies, has confined the procedure to Chapter VI, as Section 134 in

terms provides; and Order 21, Rule 92 has no application because the very provision in Section 134 is a provision such as is contemplated by

Section 192 as restricting the application of the CPC to the Madras Estates Land Act. Once it is found that Order 21, Rule 92 has no application,

a civil suit clearly lies, because the only form of suit in which the ordinary jurisdiction is barred in Schedule A of the Madras Act at all resembling

the present suit is that described in item 12 ""to contest the right of sale of a holding""; and that is not the present suit. Here the plaintiff does not

contest the right of sale; he pleads that the sale itself is fraudulent.

17. There is a concurrent finding of fraud.

18. I agree therefore that the appeal fails and must be dismissed with costs.