

(1942) 12 MAD CK 0008
In the Madras High Court

Kandaswami Goundan and Others

APPELLANT

Vs

Subbarama Ayyar and Others

RESPONDENT

Date of Decision : 08-12-1942

Acts Referred:

Citation : AIR 1943 Mad 414 : (1943) 56 LW 135 : (1943) 1 MLJ 193

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The Official Receiver of Coimbatore held a sale of certain lands, which were purchased by the petitioner in C. R. P. No. 2244

of 1939, who is a respondent in C. M. A. No. 480 of 1940. Prior to the sale the insolvent had put in an application to scale down the debt under

Act IV of 1938 and some creditors, who are the appellants here, put in an application u/s 68 of the Provincial Insolvency Act to set aside the sale.

The learned Subordinate Judge set aside the sale on three grounds. One was that the purchaser, the 7th creditor, had been appointed a receiver of

the property in a mortgage action and that it was against public policy to permit a receiver to purchase the property. The second ground was that

the scaling down application was pending and that the probable result of that application would be a considerable scaling down of the mortgage

debt, with the result that the lands would fetch a very much higher price. The third ground was that there was no proper notice to the other

creditors. In appeal, the learned District Judge thought that although in certain cases a receiver ought not to be allowed to bid, there could be no

objection in the present case. On the other two points he thought that no decision could properly be arrived at in the absence of evidence which

had not been admitted by the Subordinate Judge. He therefore allowed the appeal and remanded the application for fresh disposal. The appeal is

against the order of remand by the District Judge; and the revision petition is against the order of the Subordinate Judge, it being contended in

revision that Section 23 of Act IV of 1938 did not apply and that therefore the sale could not be set aside.

2. The learned District Judge referred to a decision in Gurjala Subramanyam (died) Gurjala Srinivasaiah, represented by guardian Gurjala

Venkataramanayya and Others Vs. Damavarapu Reddi and Others, in which it was held that as a matter of public policy a receiver should not be

allowed to bid in an auction sale held in execution of a decree arising out of a mortgage in which he had been appointed a receiver and that if he

did bid, the sale should be set aside on that ground alone without any inquiry as to whether any person had been prejudiced by his purchase. The

learned District Judge sought to distinguish that case from the present case by pointing out that Gurjala Subramanyam (died) Gurjala Srinivasaiah,

represented by guardian Gurjala Venkataramanayya and Others Vs. Damavarapu Reddi and Others, related to a Court-sale in execution of a

decree, whereas in the present case the sale was by the Official Receiver. I can see no distinction between a sale by a Court and a sale by the

Official Receiver. The principle underlying the decision in Gurjala Subramanyam (died) Gurjala Srinivasaiah, represented by guardian Gurjala

Venkataramanayya and Others Vs. Damavarapu Reddi and Others, had no connection with the nature of the selling agency. It asserted that it was

against public policy that a receiver, who had special means of knowing during the course of his receivership the peculiarities and the value of the

property, should be allowed to take advantage of that knowledge at a sale. That principle applies equally to the present case. It is pointed out that

in that case the receiver continued as receiver right up to the date of the sale, whereas in the present case he ceased to be a receiver with the

adjudication of the judgment-debtor, Even so, I doubt whether a distinction can be drawn. No case has been pointed out to me in which the

general principle laid down in Gurjala Subramanyam (died) Gurjala Srinivasaiah, represented by guardian Gurjala Venkataramanayya and Others

Vs. Damavarapu Reddi and Others, has been departed from. It must apply to all cases where a receiver has been appointed, unless by some other

principle a particular class of cases are excepted. Moreover, as the Official Receiver had a right only in the equity of redemption (because the mortgagees continued to hold the security for their debts), the respondent continued to be receiver up to the date of the sale and even thereafter.

3. The appeal is therefore allowed, the order of the District Judge set aside and that of the Subordinate Judge restored with costs here and in the District Court. It would follow that the Civil Revision Petition, which is against the order of the Subordinate Judge, has also to be dismissed.

4. As there has been much delay during the pendency of the proceedings in the lower appellate Court and in this Court, the learned Subordinate Judge should expedite the proceedings now pending before him.