

(1945) 10 MAD CK 0018
In the Madras High Court

Kandukuri Chellamma alias Mangamma and Another	APPELLANT
Vs	
Sri Ranganilayam Ramakrishnarao	RESPONDENT

Date of Decision : 24-10-1945

Acts Referred:

Citation : AIR 1946 Mad 337 : (1946) ILR (Mad) 795 : (1946) 1 MLJ 17

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These two matters both arise out of a decree passed in 1929 for Rs. 23,799. On 6th July, 1935, in execution of that

decree, a sale was held of two items of property. Item 1 was an inam village, item 2 was a less valuable property. An application was preferred

under Order 21, Rule 90, Section 47 and Order 21, Rule 72(3) of the Civil Procedure Code, to set aside the sale. That application was dismissed

by the lower Court on 6th March, 1943, in so far as: it related to the first item. On 18th March, 1943, the judgment-debtors filed an application

u/s 19 of Madras Act IV of 1938, praying the Court to scale down the decree on the footing that they were agriculturists. " The decree-holder

objected that they were not agriculturists and that the decree had been fully satisfied by the sale which had just been confirmed. On 22nd March,

1943, the trial Court, without giving a finding on the question whether or not the applicants were agriculturists, dismissed the application on the

ground that no decree subsisted. Against the order dismissing the application to set aside the sale CM.A. No. 372 of 1943 has been filed. Against

the order dismissing the application u/s 19 of Act IV of 1938, C.R.P. No. 756 of 1943 was preferred. By reason of the amendment to Madras

Act IV of 1938 under, Madras Act XV of 1943, the order u/s 19 has become retrospectively appealable. The Civil Revision Petition has therefore

been treated as a civil miscellaneous appeal, there being no question of any payment of deficit Court fee.

2. We will first deal with the contentions in C.M.A. No. 372. We must say at once that we do not consider that there are any grounds for setting

aside the sale by reason of any material irregularity resulting in substantial injury. The irregularities upon which reliance is placed are two. Firstly, the

Court ordered when each party placed a valuation on the property and the valuations were widely different, that the sale proclamation should

embody both the valuations. By some oversight this direction was not carried out and the sale proclamation merely noted the figure of the upset

price which was considerably higher than the valuation given by the decree-holder and considerably lower than the valuation given by the

judgment-debtors. When the sale was held subject to this upset price for Rs. 30,000, there were no bidders. The upset price was subsequently

reduced to Rs. 20,000 and the property was eventually sold to the decree-holder for Rs. 21,000. There are really no materials upon which we can

hold that the price was inadequate or that the inadequacy of the price, if any, was due to this omission to publish these two widely divergent

estimates of the value of the property. The other irregularity relied upon under Rule 90 is based on the fact that by some oversight, the amount of

the decree was overstated in the sale proclamation. The decree-holder, having been allowed to bid and set off and the amount of the decree as

stated in the proclamation being more than the amount of the price bid by the decree-holder, there was no cash deposit required from the decree-

holder. The mistake was discovered eventually and the excess of the sale price over the true amount due under the decree was immediately

deposited, but not within the fifteen days contemplated in Order 21, Rule 85 of the Civil Procedure Code. Granted that there has been an

irregularity in this respect, it is difficult to see how it has occasioned any injury to the judgment-debtor. The effect of the overstatement of the

amount of the decree was to make the decree-holder pay more for the property than he would presumably have paid otherwise and there is no

basis for the assertion that the decree-holder was put into a position to drive other bidders away.

3. Turning to the contention that the sale should be set aside by reason of the provisions of Order 21, Rule 72(3), Civil Procedure Code, the facts

are as follows : Before the first attempt to sell the property was made when the upset price had ""been fixed at Rs. 30,000, the decree-holder filed

an application for permission to bid and set off his decree. There was no objection to this prayer and permission was granted in the following

words: ""Permission to bid for upset price fixed granted."" This order is dated 20th October, 1933. On the actual date of the first attempt to sell, the

Court, at the request of the decree-holder passed a specific order giving permission. to set off, without any further qualification. This sale being

unsuccessful there was a reduction of the upset price and a resale. Apparently by oversight there was no fresh application for leave to bid and set

on". But the right of the decree-holder to bid at the sale was not questioned until,after the sale had been held. The trial Court has held that the grant

of permission to the decree holder to bid :?" for the upset price fixed "" must be read as conferring a right to bid, not only at the upset price fixed at

that time but at any upset price which might be fixed thereafter. It seems to us that that is not a very probable interpretation of the intention of the

Court when this order was passed. Probably the order was so worded in order to limit the permission to the decree-holder to bid on the basis of a

starting price of Rs. 30,000 and not to confer an unlimited permission to bid regardless of the starting price which might be fixed thereafter.

However, under Order 21, Rule 72, Civil Procedure Code, when the decree-holder purchases without permission, the Court may, if it thinks fit,

set aside the sale. There is no obligation, on the Court to do so. In the circumstances of this case we are of opinion that the decree-holder had no

intention to bid at the sale without permission. He, was probably unaware""that the permission already given did not extend to the resale and in this

view we do not consider that it is a case for ordering a resale, We do not, however, propose to pass any final order on C.M.A. No. 372 of 1943

at this stage, because to do so may seriously prejudice the judgment-debtors in the connected application for relief u/s 19.

4. Turning to C.R.P. No. 756, the question whether the judgment-debtors have a right to ask the Court to scale down the decree if they can

establish that they are agriculturists, has to be decided in rather different circumstances now from those which prevailed when the. lower Court

dealt with the matter. The lower Court having confirmed the sale and no appeal having at the time been preferred against the order of confirmation,

it was justified in rejecting the application for relief under the Act.;

5. But that order itself is now appealable by reason of the amending Act and this civil revision petition which we are treating as an appeal must be

regarded as a continuation of the original application. By the time this matter has come before us, the apparent finality of the lower Court's order

rejecting the application to set aside the sale has disappeared and we are as an appellate Court seised of both matters. The question whether the

sale is or is not to be confirmed has not yet been finally decided.

6. We have held in *Nataraja Pillai and Another Vs. Rangaswami Karamundar*, that an application u/s 19 of Act IV of 1938 does lie when a sale

has been held which would, if confirmed, satisfy the decree, if the application u/s 19 is preferred at a time when the confirmation of the sale has

been postponed owing, to the pendency of an application under Order 21, Rule 90, Civil Procedure Code., We have listened to arguments on the

question whether when there is a sale and the decree-holder has been given permission to bid and set off, the decree is satisfied at the moment of

the sale or only at the time when the sale is confirmed and we have been referred to conflicting decisions on the question whether in the interval

between the holding of the sale and the confirmation, the decree-holder is entitled to interest on his decree or is entitled to mesne profits on the land

if he is the purchaser, as throwing light on the question of the time with effect from which the decree must be deemed to have been satisfied. For

the purposes of the present case it is not necessary for us to go into those decisions. We are bound by the view which we ourselves have taken that

when there is a sale the result of which will be to satisfy the decree, the decree is not satisfied so as to prevent the filing of an application u/s 19 of

Act IV, until the confirmation of the sale.

7. It is, however, further contended by Mr. Rajah Aiyar for the respondent that even granting so much, when after the sale has been confirmed by

the trial Court on the dismissal of the application under Order 21, Rule 90 and an application u/s 19 has also been dismissed before any appeal

against the former order has been preferred the subsequent filing of an appeal against the order of confirmation would not justify the disposal of a

simultaneous appeal against the order u/s 19 on grounds other than those which existed when the latter application was filed. We are unable to

accept this contention. It was held by the Privy Council in *Chandramani Shaha v. Anarjan Bibi* (1934) 67 M.L.J. 79 : L.R. 61 IndAp 248 : ILR 61

Cal. 945 in a case in which the trial Court dismissed an application under Order 21, Rule 90 and confirmed the sale and the High Court dismissed

an appeal from that order, that the date on which the sale became absolute was the date of the appellate order and not the date of the trial Court's

order. Mr. Rajah Aiyar has called our attention to another decision of the Privy Council in *Juscurn Boid v. Pirthichand Lal Chowdhury* (1918) 36

M.L.J. 557 : L.R. 46 IndAp 52 : ILR 46 Cal. 670 which at first sight appears to rest on somewhat different reasoning. That was a case in which

the sale was for arrears of revenue and there was a subsequent suit by a third party contesting the validity of the sale. That suit resulted in the sale

being held to be invalid. This decision was on some later date confirmed on appeal. Thereafter the purchaser at the revenue sale brought a suit for

the refund of the purchase price on the ground of failure of consideration and the question was what was the date of the cause of action i.e., the

date on which the consideration failed. Their Lordships held that it was the date on which the sale was set aside by the trial Court and not the date

on which that decision was confirmed by the appellate Court. It is to be noted that their Lordships were not then considering the question which

we now have to decide, namely, when the sale becomes absolute under the provisions of Order 21, Civil Procedure Code, In our opinion the

decision in *Chandramani Shaha v. Anarjan Bibi* (1934) 67 M.L.J. 79: L.R. 61 IndAp 248 : ILR 61 Cal. 945 applies to the facts of the present

case. The validity of the sale to the respondent is still in question and until the question is finally decided by the order of this Court, the sale cannot

be said to have become absolute. In such circumstances it seems to us that the appeal must be regarded as a continuation of the proceedings in the

lower Court to set aside the sale and on the analogy of our decision in *Nataraja Pillai and Another Vs. Rangaswami Karamundar*, we must hold

that the application u/s 19 will lie during the pendency of the appeal and though it was dismissed before the appeal was filed, when we are seised

of both matters in appeal here and the appeal from the order confirming the sale has not been decided, we must hold that the application u/s 19 will

lie provided that the applicants can establish that they are agriculturists.

8. In this view therefore we remand C.R.P. No. 756 of 1943, to the trial Court for a finding on the questions:

(i) Whether the applicants are agriculturists;

(ii) If so, what will be the result of applying the provisions of the Act to the decree against them.

9. Three months' time for finding and one week thereafter for objections. Final order, on C.M.A. No. 372 of 1943 will be passed after receiving

and considering the finding of the trial Court on this matter.

10. In pursuance of the aforesaid Order, the trial Court submitted a finding that the applicants are hit by proviso (D) to Section 3 (ii) of Madras

Act, IV of 1938 and for that reason they cannot have any relief under the Act.

11. After the return of the finding, the Court delivered the following judgment:

Wadsworth, J.

12. In our previous judgment in these two cases we expressed the view that A.A.O. No. 372 of 1943 which is an appeal against an order

dismissing an application to set aside a sale in execution of a decree would have to fail; but we refrained from passing a final order to this effect

because of the pendency of the connected appeal which could only be maintained on the footing that the execution of the decree in question was

not closed by the adjustment of the sale price. In A.A.O. No. 634 of 1944 which comes on after a finding regarding the agriculturist status of the

appellants, the question is whether the appellants are entitled to scale down the decree in execution of which the properties have been sold by the

sale which is attacked in the connected appeal. The trial Court has found that the appellants are both of them disqualified from the status of

agriculturists by reason of proviso (C) and proviso (D) of Section 3 (ii) of the Madras Act, IV of 1938. The learned Judge has found that the

appellants as a family have been assessed during the relevant years to property tax in respect of buildings, or lands situated within the municipality of

Ellore of a rental value exceeding Rs. 600. He has also found that the appellants are landholders of an estate under the Madras Estates Land Act in

respect of which quit rent or jodi exceeding Rs. 100 is paid. Both these findings are challenged by the appellants.

13. The first appellant is the widow of one Veerasalingam who died in 1928. The second appellant is the son adopted by the first appellant under a power given to her by the will of her late husband. Veerasalingam had a divided brother Murtiraju who died in 1922 leaving a daughter Subbamma who filed a suit, O.S. No. 53 of 1934, claiming a half share in the properties of her father and her uncle. Her case was based on an assertion that though the properties were undivided the two brothers were divided in status. In that suit Subbamma succeeded and she was given a half share in the properties the ownership of which is a material factor in deciding the agriculturist status of the present appellants. There can be no doubt that the aggregate rental value of the properties and lands within the Ellore Municipality belonging to the family of the appellants and Subbamma is very much in excess of Rs. 600 per annum. But there are certain complications which have not been given due consideration by the learned trial Judge.

The house property in respect of which tax has been paid on an annual rental value of Rs. 500 in 1935-36 and of Rs. 672 in 1937-38 is property in respect of which the appellants were not as a result of the partition suit entitled to more than a half share. If the first appellant was actually made to pay the tax on the full value of this property, she must in the light of the decree in the partition suit be deemed to have paid it as to a half on behalf of her co-tenant, her husband's niece Subbamma. " There are however other lands in respect of which property tax was recovered. The important items are T.S. Nos. 203 and 206/1. It is fairly clear that No. 203 is an agricultural land. The cultivation account, Ex. P-8, for fasli 1344, that is to say just before the relevant period, shows that there was a water application in respect of the whole extent of this number and that nearly a half of the number was actually cultivated by water taken from the canal. In fasli 1346 (1936-1937) the cultivation account shows that there was again a water application for this number though there was no actual cultivation; and in the following year 1937-1938 one acre of this number, that is a little over one-third of the total extent was planted with rain-fed maize. On these materials it is fairly clear that No. 203 measuring 3.44 acres remained agricultural land notwithstanding the fact that it was situated within the municipality and was generally referred to by the first appellant in an affidavit as a site along with other lands. No doubt it was a potential building site; but it has been used as agricultural land during the relevant

period.

14. Regarding No. 206/1 measuring 7.54 acres the position is not quite so clear. In 1934-35 it is shown as waste. There is a note of "water

application" which indicate that water was applied for and refused. We have no information regarding the use of the land in fasli 1345 but in fasli

1346 there is a note that the land was "banjar" or waste. In fasli 1347 it is noted in the cultivation account that 1.50 acres of this number was

cultivated with brinjal, irrigated by water from a private well. It is "clear that this cultivation must have been in the half share allotted to the

appellants by the partition decree; for the commissioner's report in the partition suit indicates that there is a well which has a channel serving the

land allotted to the appellants. On these materials, notwithstanding the fact that T.S. No. 206/1 has been mainly lying waste and is situated within

the municipality and has been generally described as a site along with other lands, it seems to us clear that this is an agricultural land which is likely

to be converted into a building site in future but has not yet been so converted. If these agricultural lands are excluded having regard to the figures

summarised in the lower Court's finding it will be clear that the finding that the appellants are disqualified from the status of agriculturists by reason

of proviso (C) is not correct.

15. The learned Subordinate Judge has also found that they are disqualified under proviso (0) by reason of their ownership of the village of Ted

lam which bears a jodi of Rs. 234. This village was brought to sale by the respondent in execution of the decree and it is the sale of this village

which is under attack in the connected appeal. The sale was held in 1935 and a petition was filed under Order 21, Rule 90, attacking the sale as

bad by reason of various alleged irregularities. We have already indicated our view that the attack on the sale must fail, but we have not yet passed

orders setting aside the sale. The question is whether in this state of affairs the appellants can be deemed to have been the landholders of the village

at the commencement of the Agriculturists' Relief Act, having regard to the definition of "landholder" in the Madras Estates Land Act as a person

owning an estate or part thereof. It appears that the actual possession of the estate is now with a receiver appointed in the execution proceedings;

but we have no precise information as to the date of his appointment.

16. It has been argued for the appellants by Mr. Rangachari that by reason of certain observations in the decision of the Privy Council in Bhawani

Kuwar v. Mathura Prasad Singh (1912) 23 M.L.J. 311 : L.R. 39 IndAp 228 : ILR 40 Cal. 89 the sale must be deemed to have conveyed the

ownership to the decree-holder at the very moment when it was held, regardless of the fact that it has been pending confirmation for something like

10 years owing to an attack made by the the appellants themselves on the validity of the sale. We have read the decision just referred to with care

and can find nothing in it to justify the conclusion that their Lordships were intending to lay down that in all sales in execution, regardless of the

question whether there was or was not anv attempt to get the sale set aside under Rule 89 or Rule 90 of Order 21, the ownership of the property

passed to the successful bidder as soon as the auction was concluded. It seems to us that their Lordships were in that case considering the position

when the sale was in fact not challenged and had already become absolute by reason of the passage of time and the actual promulgation of the

confirmation order. They were not concerned with the position which arises when either the judgment-debtor makes a deposit of the purchase

price within the thirty days allowed in Rule 89 or when some person interested attacks the sale as an irregular proceeding resulting in material loss.

The contention that in all cases, regardless of confirmation, title passes to the purchaser as soon as the auction is concluded is difficult to econcile

either with the language of Section 65 of the CPC or with the phraseology used in Rule 89 of Order 21 as it stood before its amendment in

Madras. The latter provision has received very full consideration by a Full Bench of this Court in Sundaram alias Mytheenbibbi Vs. Mamsa

Mavuthar, Sheikkasim Mavuthar, . It seems to us that the whole reasoning of the learned Judges who constituted that Full Bench rests on the

assumption that, whatever may be the position after confirmation, when the sale is still subject to attack and is being attacked, the ownership of the

property remains with the judgment-debtor, subject to the possibility that in the event of the sale being confirmed that ownership will be deemed to

have passed to the purchaser retrospectively with effect from the date of the actual sale.

17. We have already indicated that in our view the sale of Tedlam village was a good sale which should be confirmed. In that view, seeing that we

must now pass a-i order confirming that sale, we are driven to the consequential conclusion, that, whatever might have been the position if the sale

had been set aside, in the view that we take, the confirmation of the sale necessarily results in the conclusion that the title of the appellants to that

estate is deemed to have been lost with effect from the date of the sale, that is to say, with effect from a date anterior to the period contemplated in

Section 3 of the Madras Act, IV of 1938.

18. The result, therefore, is that A.A.O. No. 634 of 1944 must be allowed and the decree must be amended on the lines laid down in the finding of

the lower Court which will result in the decree being satisfied and A.A.O. No. 372 of 1943 will be dismissed and the sale confirmed. The

appellants will receive costs in Appeal No. 634 of 1944 including the costs of the finding and will pay costs in Appeal No. 372 of 1943.