

(1924) 09 MAD CK 0006
In the Madras High Court

K.C. Nagaswami Aiyar

APPELLANT

Vs

N. Ramaswami Aiyar and Others

RESPONDENT

Date of Decision : 25-09-1924

Acts Referred:

Trusts Act, 1882 — Section 90

Citation : AIR 1925 Mad 288

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The first point urged for the appellant in this second appeal is that the purchase by the 1st defendant enured for the benefit of

the plaintiff as well, and that he is, therefore, entitled to a decree so far as his share is concerned. The finding is that both the plaintiff and the 1st

defendant defaulted to pay the Government revenue, in consequence of which the revenue authorities brought the plaintiff's properties to sale, and

it was sold in auction. The contention of Mr. Anantakrishna Aiyar for the appellant is that the plaintiff and the 1st defendant are co-owners, that by

the default of the co-owners the property was sold, that taking advantage of his position as such the 1st defendant bought the property and that,

therefore, Section 90 of the Trusts Act applies to this case In the first place I am not satisfied that the word "co-owner" applies to the case of joint

pattadars who are ryotwari tenants. The plaintiff is the owner of specific items of property, and the mere fact that the patta stands in the joint names

of himself and one or two others would not make the other persons co-owners which the plaintiff within the meaning of Sect. 90 of the Trusts Act.

It is urged that there is a joint liability to pay the Government revenue and that that joint liability makes them co-owners. In my opinion it is only an

accident that the patta stands in the names of two persons who are entitled to different items of property and who have no community of interest

between them. In this case no doubt the plaintiff and the 1st defendant happen to be relatives, but there are cases in which persons who have

nothing to do with one another happen to own property for which patta stands either in the joint names of both in the name of one of them or in the

name of a third person. In such cases, if the owner of some specific items makes default in paying the Government revenue, the Government is

entitled to bring any one of the items mentioned in the patta, in respect of which a default in payment of revenue is made, to sale, and this

circumstance, in my opinion will not make joint pattadars or persons, who own lands separately but for which the patta is joint, co-owners.

Reliance is placed upon an observation in *Faizar Bahman v. Maimuna Khatun* 17 C.W.N. 1233 for the position that the plaintiff and the 1st

defendant are co-owners. There is no definition given of co-owners but in all the cases which have been cited at the Bar I find that co-owners are

persons who own property jointly, that is to say, there was no division by metes and bounds of the shares of the different owners. In the case in

Faizar Bahman v. Maimuna Khatun 17 C.W.N. 1233 the persons who made default in payment of the revenue due to Government were co-

owners with the persons whose shares were afterwards sold. Section 90 of the Trusts Act applies only to cases of tenants for life, co-owners,

mortgagees and other qualified owners, of property who avail themselves of their position as such in gaining an advantage in derogation of the

rights of other persons interested in the property. In that view I do not think that the decision in *Deo Nandan Prasad v. Janki Singh* AIR 1916 P.C.

227 helps the appellant. In that case their Lordships of the Privy Council held that, if one co-owner makes default in payment of Government

revenue and if the object be to bring the share of the other co-owners to sale and afterwards to buy the property himself, such a sale, though good,

would enure, for the benefit of the owner of the share which has been sold. They also observe that it is not necessary that there should be actual

fraud proved in order to enable the co-sharer whose share has been sold in auction in a Revenue sale to claim the benefit of the purchase by

another co-sharer, but from their judgment it is clear that the person who takes advantage of his position as a co-sharer must have done something

in that capacity, that is qua co-sharer, to bring the property of the other co-sharer to sale. In this case the finding is that both the plaintiff and the 1st

defendant defaulted to pay the Government revenue; and there is no finding that the 1st defendant by any act or illegal omission on his part brought

the plaintiff's property to sale. That being so, I do not think the plaintiff can claim from the 1st defendant the property which he purchased in

Court auction. The auction was a public one, and the 1st defendant and the plaintiff's brother were present. Under the Revenue Law it was open

to any defaulter to buy the property. It was open to the plaintiff to buy the property, as it was open to the 1st defendant to buy it. In these

circumstances it cannot be held that the purchase by the 1st defendant enured for the benefit of the plaintiff.

2. The next point urged by Mr. Anantakrishna Aiyar is that the Collector had no power to set aside an order made by the Deputy Collector. But

on this point the law is quite clear. The Collector is the final authority on matters of this kind, and he is the person who has to dispose of such

matters. The Deputy Collector has only delegated authority, and the Collector has power to set aside or confirm the order of the Deputy Collector.

I do not think this contention is tenable.

3. The last contention is that the Collector did not give notice to the plaintiff when he set aside the order of the Deputy Collector. I must observe,

as was fairly conceded by the learned Advocate-General, that in every case in which an order is made, against a party, notice should have been

given to that party before such order is made, whether the order is made by a Revenue authority or by a judicial authority. I think it is a salutary

principle that notice should be given to a person before an order is made against him. In this case the Deputy Collector set aside the sale but the

Collector afterwards confirmed the sale. The plaintiff has not proved that he could have urged any matter before the Collector which could have

induced him to pass an order different to that which he has passed. It appears from the evidence that the plaintiff was aware of the order, but he

did not apply to the Collector to have the order reviewed. The Collector set aside the order of the Deputy Collector solely on the ground that the

reason given by the Deputy Collector was not one of the reasons contemplated by the Revenue Recovery Act. The Deputy Collector set aside the

sale on the ground that there was no proper bid. That is not a reason for which a sale could be set aside. If the plaintiff could show that he had very good grounds which he could have urged before the Collector I would be inclined to hold that the plaintiff was prejudiced by his not being given notice before the Collector passed his order. But in the circumstances of the case it cannot be said that he was in any way prejudiced, because from the evidence it appears that he could have urged no ground successfully against the order of the Collector. On this ground, I think, this objection is not tenable.

4. In the result, the second appeal fails and is dismissed with costs.