
(1931) 01 MAD CK 0013
In the Madras High Court

Kootoorlingam Pillai and Others

APPELLANT

Vs

Sennappa Reddiar and Others

RESPONDENT

Date of Decision : 21-01-1931

Acts Referred:

Madras Estates Land Act, 1908 — Section 112

Citation : AIR 1931 Mad 724 : (1931) 34 LW 94 : (1931) 61 MLJ 203

Judgement

1. The facts out of which this second appeal arises may be stated as follows: Plaintiffs' father, Bogi Reddi, and the father of defendants 1 and 2,

Valavanda Reddi, were brothers. They were the owners of the suit properties. Valavanda Reddi died in 1890. His widow Unnamalai asserting that

the two brothers were divided claimed the suit lands and got into possession. Bogi Reddi questioned her right but ultimately entered into a

compromise by which Unnamalai was to enjoy the properties till her death and after her death Bogi Reddi or his heirs should be entitled to the

properties. Unnamalai died in 1913. Meanwhile Bogi Reddi died in 1903. Under the terms of the compromise the plaintiffs became entitled to the

suit properties. Out of the properties subject of the suit we are now Concerned in second appeal only with the properties in Schedule I which

consists of ryoti interest in certain lands in Uthumalai Zemindari. As to these, after the death of Unnamalai the plaintiffs applied to the Zamindar for

issuing a patta solely in their names but the patta was not granted to them (vide deposition of P.W. 1). On the other hand it looks as if the suit lands

were registered in the names of the three plaintiffs, the first two defendants and their deceased sister Lakshmi. This appears from Exhibit IX. This is

a copy of the sale notice u/s 112 of the Estates Land Act. But it does not appear whether the plaintiffs knew that the patta was issued in their

names and in the names of their cousins. Their case is that when they attempted to take possession of the lands they were obstructed by the

defendants. Afterwards proceedings were taken u/s 112 of the Estates Land Act for selling the holding for default in payment of rent. The plaintiffs

thereupon bring the suit. The District Munsif dismissed the suit on the ground that they were bound by the proceedings taken against defendants 1

and 2. On appeal the Subordinate Judge found that the sale notice was never served upon the plaintiffs and, therefore, the plaintiffs are not bound

to set it aside. He also found that the sale was not duly published by proclamation by beat of tom-tom and that the sale was, therefore, illegal and

fraudulent and he decreed the plaintiffs' suit. The 4th defendant was the purchaser in the sale u/s 112. After the purchase he sold the property to

3rd defendant's husband. That is how 3rd defendant is impleaded in the suit. She afterwards died and the 7th defendant was brought in as her

legal representative. 4th and 7th defendants are the appellants in second appeal so far as this item is concerned.

2. In second appeal a question is raised that the suit is barred by limitation as the suit was filed more than one year from the date of sale. The sale

was held on the 21st March, 1917 (vide Exhibit II) and the suit was filed on the 21st May, 1919. The second appeal first came on for hearing

before Kumaraswami Sastri, J. He called for a finding as to whether the plaintiffs had knowledge of the rent sale on or before the date of sale. The

Subordinate Judge has now returned a finding to the effect that they had no knowledge of the sale on or before its date but that they became aware

of it on the 19th January, 1918. This finding was arrived at on the evidence of P.W. 3 who states, that he was told by the 1st plaintiff of the rent

sale 4 or 5 years before giving evidence. The learned Subordinate Judge taking the figure "5" records the finding already mentioned. After the

return of the finding the second appeal comes on before me for disposal, and the question of limitation is again pressed by the learned Advocate

for the appellants.

3. On the facts and the findings of the Subordinate Judge already mentioned it is clear that the three plaintiffs only are the lawful pattadars of the

suit lands. It does not appear whether they were even aware of the fact that the suit lands were registered in the joint names of the three plaintiffs,

the first two defendants and their sister. The action of the Zamindar in registering them, as pattadars is not binding on the plaintiffs who alone are the lawful owners and the subsequent proceedings therefore do not bind them. Even if they were aware that the suit lands were registered in the names of all the six, as the Subordinate Judge found that the notice was issued only to the first defendant it cannot bind the plaintiffs. In my opinion, therefore, the proceedings taken u/s 112 of the Estates Land Act amount to a nullity so far as the interest of the three plaintiffs is concerned. It may bind the interest of defendants 1 and 2, but in the present case such interest turns out to be nothing. In my opinion, notice to the lawful ryot is such an important condition precedent to the holding of the sale u/s 112 that the want of it must be regarded as making the sale a nullity. Mr. Srinivasa Aiyar appearing for the appellants relied on some decisions under the Revenue Recovery Act. In my opinion they cannot be of any use to decisions under the Estates Land Act. A decision under the Madras Revenue Recovery Act cited before me by the learned Advocate Vadlur Chinna Nagi Reddy v. Deumeni Venkataramiah (1917) 7 L.W. 468 proceeds on the view that though the actual sale was made without notice to the plaintiff, subsequent proceedings in connection with it came to his knowledge; and it was, therefore, held that the sale was not without jurisdiction. This seems to imply that if all the proceedings are taken without the knowledge of the defaulter the sale will be without jurisdiction and it is on this ground that the decision in Puma Chandra Chatterjee v. Dinabhandu Mukerjee ILR (1907) 34 C. 811 was distinguished. This last decision is a decision under the Public Demands Recovery Act Bengal) by a Bench of five Judges. It was there held that if there is no notice to the defaulter the sale is a nullity, that Article 12 of the Limitation Act does not apply and that only Article 142 applies. To the same effect is the decision in the same volume Syamlal Mandal v. Nilmony Das ILR (1907) 34 C. 241. Notice to the defaulter is so important that the want of it renders the sale a nullity. I agree with these decisions and hold that the sale in this case is a nullity. If so, it does not matter when the plaintiffs first became aware of the sale afterwards whether in 1918 or in 1919. This view is enough to dispose of the second appeal.

4. But I cannot abstain from expressing my view upon another point which was discussed by the learned Advocate, namely, whether Article 12 (b)

of the Limitation Act applies to the sale under the Estates Land Act at all. Devadoss, J., in. Subbayya v. Kristayya (1926) 52 M.L.J. 390 held that

Article 12(b) does not apply. There is also a decision of this Court by a Bench of two Judges, namely, Kamulammal and Another Vs. N.

Chokkalingam Asari, , to the effect that it applies. The only question discussed in the latter decision is whether the absence of provisions for

confirming the sale under the Estates Land Act prevents the Article from applying. The ground on which Devadoss, J., held that Article 12(b) does

not apply was neither raised nor discussed before the learned Judges. The respondents' vakil in that case withdrew from the case. On the scheme

of the Estates Land Act the right to the sale arises immediately the default is committed. This is clear from the language of Section 112, the notice

referred to therein informing the defaulter that his holding will be sold. If a suit questioning the right of sale is filed but decided against the defaulter,

the landlord may apply to the Collector for sale (Section 114). If no suit at all is instituted such application shall be made within 45 days of the

posting by the Collector of intimation of service (Section 115). The application for sale referred to in these sections is really an application for

conducting or carrying on sale, not seeking an order from the Collector that a sale shall be made. This is clear from the next Section 116 which

says, ""Immediately on receipt of such application the Collector shall appoint an officer to conduct the sale"". The scheme of these sections does not

contemplate that the Collector shall pass an order directing a sale. If there is no decree or order by the Collector authorising a sale to be held,

Article 12(b) of the Limitation Act does not apply. This is the view of Devadoss, J., with which I agree. If my decision in the second appeal were

to rest only on this conclusion, it may be that I would refer the matter to a Bench consisting of myself and another learned Judge. But as my view

on the first point is enough to dispose of the second appeal I abstain from doing so though I feel quite clear on the second point.

5. The second appeal fails and is dismissed with costs.