

(1953) 04 MAD CK 0058

In the Madras High Court

Case No : A.A.A.O. No"s. 73 and 74 of 1951

K.R. Srinivasa Ayyar and Others

APPELLANT

Vs

T.A. Ramachandra Rao

RESPONDENT

Date of Decision : 17-04-1953

Acts Referred:

Limitation Act, 1908 — Article 182

Madras Estates Land Act, 1908 — Section 112, 115

Citation : AIR 1954 Mad 367 : (1953) 1 MLJ 680

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : Venkataramani and Ramanatha Ayyar, for the Appellant; R. Desikan, for N. Balu Rao and V.C. Veeraghavan, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddi, J.—These two Civil Miscellaneous second appeals arise out of E. P. Nos. 68 and 69 of 1948 on the file of the Court of the Sub-Collector, Kumbakonam.

2. The facts material for this enquiry are the following: The appellants who are the landholders sought to bring the holding of a ryot, that is the present respondent, for sale in respect of arrears of rent for faslis 1353 and 1354. For this purpose, he issued notices to the defaulter through the Collector as required by Section 112, Madras Estates Land Act. On receipt of these notices, the ryots instituted two suits, S. S. Nos. 39 of 1945 and 200 of 1946 before the Collector, contesting the right of sale, within a period fixed under Sub-section (1) of Section 112. In those suits, it was agreed between the parties, that the plaintiff should pay a sum of Rs. 750 within nine months towards S. S. No. 39 of 1945 and Rs. 1750 within one year in S. S. No. 200 of 1946. On the basis of this agreement, a decree was passed by the Revenue Divisional Officer, Kumbakonam. As the plaintiff committed default, the present execution petitions were filed for the realisation of the amounts mentioned above, by bringing to

sale the ryots" holding.

3. Objections were raised on behalf of the ryot that the relief claimed in the execution. petitions could not be granted, as the execution petitions were barred by limitation by reason of Section 115(2), Madras Estates Land Act. This objection found favour with both the Sub-Collector and the Appellate Judge and the petition was dismissed.

4. The landholders who were aggrieved by this order, have preferred the present civil miscellaneous second appeals. As the question raised in both is the same, they can be disposed of together.

5. It is urged by Mr. Venkataramani in support of the appeals that the view of the Courts below that the execution petitions are barred by limitation is erroneous for the reason that Section 115, Madras Estates Land Act which provides a period of thirty days from the date of the disposal or withdrawal of the suit for sale of the holding, has no application to the present case and they are governed by Article 182, Limitation Act. According to Mr. Venkataramani, the present cases fall within the ambit of Article 182, Limitation Act as they relate to execution of the decrees passed u/s 77, Madras Estates Land Act. I do not think that. I can subscribe to this proposition.

6. Section 77, Madras Estates Land Act provides three modes of recovery of arrears of rent. They are (1) a suit before the Collector, (2) distraint and sale of moveable property, and (3) sale of a ryot's holding. The three remedies conferred on the landholder by this section are to be enforced in accordance with the procedure laid down for each of the remedies. A suit for recovery of the arrear of rents has to be filed as laid down in Part A of the schedule to the Act, which "inter alia" provides for recovery of arrears of rent within a period of three years from the date on which the arrears become due. So far as the relief of sale of holding is concerned, we have to look into the provisions of Section 111 of the Act for the procedure to be followed.

7. u/s 111 the arrear in respect of which a suit is brought must relate to the revenue year in which it has accrued. u/s 112 the landholder has to give a written notice of his intention to bring the holding to sale through the Collector stating the amounts due for arrears, interest and costs, if any, the period for which it is due, and informing him that if he does not pay the amount or institute a suit before the Collector contesting the right of sale within thirty days from the date of service of the notice, the said holding specified in the said notice will be sold. It also provides that the notice should be delivered to the Collector within one year from the end of the revenue year for which the amount is due. Under Sub-section (2) of that section, any person affected by the sale of the holding may institute a suit before the Collector contesting the right of sale within a period fixed in Sub-section (1).

8. Section 114 enacts that if the amount specified in the notice u/s 112 has not been paid and if no suit contesting the right of sale has been instituted before

the Collector within 30 days from the date of service of such notice and the defaulting ryot has been declared to be liable to pay the amount in whole or In part, the landholder may apply to the Collector for sale.

9. Section 115 is in the following terms:

"(1) If no suit has been instituted, such application shall be made within 45 days of the posting by the Collector, of intimation of service u/s 113

(2) If a suit has been instituted and it has been disposed of against the defaulter or withdrawn, such application shall be made within 30 days of the date of the disposal or withdrawal."

10. It is manifest from the above provisions of law that if a landholder wants to avail himself of the remedy of bringing ryot's holding to sale conferred on him by Section 77, he has to follow the procedure laid down in Sections 111 to 115. In this case, it is indisputable that the landholder invoked the provisions of Sections 111 to 115 to bring the ryot's holding to sale. He did not resort to either of the other remedies provided for in Section 77. Mr. Venkataramani's contention as already pointed out is that Sections 111 to 115 cannot have any bearing on the present case, as the decree passed in the two suits should be regarded as decrees for arrears of rent and that, therefore, he is entitled to file execution petitions within three years from the date of the decrees as mentioned in Article 182, Limitation Act. But the difficulty in the way of treating this as a decree for arrears of rent is that the decree was passed not in a suit instituted by the landholder for the recovery of the rent due to him, but by the ryot u/s 112 disputing the right of the landholder to bring the holding in his occupancy to sale u/s 111.

A suit u/s 112 in which the amounts due by the ryot to the landholder was agreed to between the parties and a time was given for the payment of this amount cannot by any stretch of imagination be considered to be a suit for the recovery of arrears of rent as provided for in Part A of the schedule to the Act. The amount due to the landholder was agreed to between the parties and the landholder granted some time for the payment of the money in that suit. In fact a reference to the terms of the decree itself would clearly indicate that the parties never regarded it as a decree passed u/s 77, because it specifically stated that in the event of failure of the plaintiff to pay the stipulated amount, the defendant was at liberty to sell the lands mentioned in the notice u/s 77 for the recovery of the said amount. It is therefore clear that the parties were contemplating any resort to the sale of the ryot's holding as specified in Sections 111 to 115.

11. It follows that the petitions filed beyond the time provided for in Section 115, Madras Estates Land Act are barred by limitation and Article 182 does not govern the present case.

12. The decisions relied on by Mr. Venkataramani are not in point and need not

be referred to.

13. The civil miscellaneous second appeals are, therefore, dismissed; but in the circumstances, I direct the parties to bear their own costs throughout. No leave.