(1947) 02 MAD CK 0023

In the Madras High Court

Kuppa Sankara Sastri and Others — APPELLANT

Vs

Kakumanu Varaprasad and Another — RESPONDENT

Date of Decision : 28-02-1947

Acts Referred:

Citation : AIR 1948 Mad 12 : (1947) 60 LW 307 : (1947) 1 MLJ 369

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellants were indebted to the respondents under a mortgage of 1928. A suit was filed on the mortgage and a

preliminary decree was passed on the 13th August, 1937, for a sum of Rs. 4,119-7-4. A final decree followed on the 8th January, 1938. An

application was filed u/s 19 of Madras Act IV of 1938 to scale down the decree. At the time when this application was filed, execution

proceedings were pending. The application was rejected on the ground that the judgment-debtors were not agricultursts, they having no saleable

interest in agricultural lands. The sale was held on the 9th January, 1939. Item I realised Rs. 1,900 and item II realised Rs. 2,223. The decree-

holder was the purchaser of both lots. The judgment-debtors filed a revision petition against the dismissal of their application u/s 19 of the Act but

there was no stay of confirmation of the sale, nor was any deposit made or tendered even of the admitted amount. The revision petition resulted in

a decision that to the extent of their interest in the equity of redemption the judgment-debtors must be deemed to have been possessed of a

saleable interest in agricultural lands and therefore to be agriculturists. The application u/s 19 of the Act was remitted to the trial Court with the result that the decree was scaled down to a sum of Rs. 1,728-9-0 and Rs. 493 costs with subsequent interest. On the basis of the decree as

scaled down the amount which must be deemed to have been due at the time of the sale was approximately Rs. 2,469.

2. The appellants claimed by way of restitution the cancellation of the sale on payment by them of the amount of the decree as scaled down. Both

the Courts below have held that they were not entitled to have the sale cancelled but that they are entitled to a refund of the difference between the

amount due on the decree as scaled down and the amount realised by the sale.

3. In appeal it is contended firstly that the sale for more than the scaled down amount offended against Section 7 of Act IV of 1938 ; and secondly

that the equitable way of dealing with the application for restitution is to set aside the sale, at any rate, of the second item, leaving, the judgment-

debtors to deposit the small amount which remained due under the revised decree after the sale of the first item.

4. The first argument cannot be sustained. It is now well settled that the general provisions of Section 7 of Madras Act IV of 1938 must be read in

the light of the specific provisions of Section 19 relating to decrees; and unless and until the proper procedure has been taken to alter the decree, it

is not open to the executing Court to refuse to execute the decree as it stands.

5. The second argument also seems to rest on a misunderstanding of the correct legal position. When the first item was sold for Rs. 1,900 there

would remain an amount of approximately Rs. 569 due under the decree as finally scaled down. This amount was secured on the balance of the

hypotheca and unless it was paid the Court had necessarily to complete the sale. It has not been shown that the second item was capable of sub-

division with convenience or that if the decree as ultimately revised had been in existence at the time of the sale, the sale of the second item would

not have been necessary in order to realise the balance of the decree. The legal position has been summarised in Maganti Venkataswami Naidu

Vs. Annapareddi Nagireddi alias Mutyalu Reddi, the head-note of which was as follows:

As the true criterion for restitution is to consider what would be the position had the appellate Court''s decree been passed by the Court of first

instance and as the sales which had been held were sales which would have been held even if the Court of first instance had decreed the amount

eventually found to be due in appeal, there was no legal or equitable reason for setting aside the sales.

On the figures in the present case it is apparent that the sale of the first item would have left a balance of approximately Rs. 569 still due under the

amended decree, and had the ultimate decree been in existence at the time of the sale, the executing Court would have had no option but to

proceed with the sale of the second item in order to realise the balance due under the decree. In fact, the judgment-debtors have been paid the

whole of the excess price realised by the sale and their real grievance is that they have lost the increment in the values by the sale. There is no

equitable reason why they should be entitled to claim any portion of this increased value.

6. The appeal is dismissed with costs.