

(1926) 08 MAD CK 0014
In the Madras High Court

Kuthala Mudaliar

APPELLANT

Vs

Venkata Reddiar and Others

RESPONDENT

Date of Decision : 06-08-1926

Acts Referred:

Citation : AIR 1927 Mad 253

Hon'ble Judges : Ramesam, J

Bench : Division Bench

Judgement

Ramesam, J.—The facts out of which this second appeal arises may first be stated. The trustees of the Nachiar Devasthanam, Srivalliputtur, applied u/s 112 of the Estates Land Act for the sale of the holding of a defaulter on account of arrears of rent due for Faslis 1323 and 1324 to the Devasthanam. One sale was held on the 11th of February 1916, for rent due for Fasli 1323, and another sale was held on 20th February 1916, for rent due for Fasli 1324. In both these sales the plaintiff purchased for Rs. 45 and Rs. 55 respectively and the plaintiff obtained delivery of possession also. One Kothai Ammal, wife of the present 4th defendant, presented an application to the Revenue Divisional Officer saying that the properties sold were purchased by her before the Estates Land Act, and that the defaulter had no interest in them at the time of the sales and that she ought not to be dispossessed. The Revenue Divisional Officer dismissed that petition. His order could have been passed only u/s 332 of the old Civil P. C. which was made applicable by the Estates Land Act. There was an appeal to the District Collector of Ramnad (Ex. P.). I doubt if an appeal lay to the Collector. On this appeal the Collector of Ramnad seems to have proceeded to hold a kind of departmental enquiry. First, he

called for a report from the Revenue Inspector and he submitted Ex. XV. There was a further report called for which is Ex. XVI. Ultimately proceedings were passed by the Collector which are exhibited as Ex. G in the case in which the Divisional Officer was requested to re-deliver possession of the property. The order does not say to whom the re-delivery was intended. But obviously it was to Kothai Ammal. The order is somewhat obscure. It says: ""The execution of sale is cancelled."" It was passed on the footing that the prior purchase amounts to an encumbrance within the meaning of Section 125 of the Act. which, in my opinion, it does not. The order and enquiries were made without any notice to the present plaintiff. If notice had been given to him before the enquiry was made, it might have been legal, assuming an appeal lay to the Collector. As it is, it was a departmental enquiry which is totally ultra vires and void. The remedy of the plaintiff after dispossession would have been to bring a suit to recover possession if he thought that the Collector's findings about the purchase by Kothai Ammal were wrong, or to obtain refund of the purchase-money if there was a genuine purchase by Kothai Ammal; and if the plaintiff meant to submit to the finding of the Collector, the present suit by the plaintiff is only for refund of the purchase money and not for recovering possession of property.

2. The plaintiff is the appellant before me and a preliminary objection is taken that no second appeal lies. Viewing as a claim for refund of the purchase-money by reason of the dispossession under the orders of the Collector, I think the suit falls under Art. 2 of the Schedule, but it is pointed out that the plaintiff gave up the 1st defendant at one stage of the suit. The plaint has not been amended by striking off the 1st defendant's name. In these circumstances I think the rulings of *Cheriyonni v. Nhera Poyile* [1911] 22 M. L. J. 47 and *Vaddadi Sannamma v. Koduganti Radhabhayi* [1918] 41 Mad. 418 apply. The 1st defendant must still be regarded as a party to the suit. This also seems to be the view taken by *Macleod, C. J., in Ganappa Putta Hegde v. Hammad Saiba A. I. R. 1925 Bom. 440*. I cannot agree with the decision in *Puthenpurayil v. Kandiyal* [1916] 2 M. W. N. 31. I think the second appeal lies.

3. As a suit for refund of the purchase-money it can be based only on the footing that Kothai Ammal's purchase was a perfectly valid purchase;

that the defaulter had no title to the property at the time of the sale, and that the plaintiff himself purchased nothing. There are no allegations to this effect. It is solely based on the footing that the Collector dispossessed him wrongfully and that such wrongful dispossession gives him the right to refund. Now, if Kothai Ammal did not purchase the property, and if the plaintiff purchased a valid title in the revenue sales, the Collector's order of dispossession was certainly wrong; but such wrongful order would not give the plaintiff a cause of action for a suit to get a refund but would enable him to maintain a suit for possession. It is impossible, therefore, to construe this plaint as a plaint with the proper allegations that have to be made before refund of the purchase-money could be obtained.

4. In the Courts below the only point that was pressed and considered was whether there was a cancellation of the sales by the Collector. The

District Munsif found that there was, and; therefore, the plaintiff is entitled to refund of the purchase-money. The District Judge held that if there

was an order of cancellation it was made without jurisdiction and that the plaintiff was not bound by it and, therefore, the plaintiff was not entitled

to refund of the purchase-money. In my opinion, either reasoning is fallacious. In my opinion, this is not the point that has to be considered by the

civil Courts before the plaintiff could obtain the refund; and the real point was not made the subject of issues nor of allegation in the plaint, nor was

it considered by the Courts below. It is, therefore, impossible to give any relief to the plaintiff in this suit. The proper suit to be filed by the plaintiff

would be not with the 4th defendant as a party but Kothai Ammal herself. He might pray either for possession of the property or in the alternative

for refund of the purchase-money according as Kothai Ammal had or had not title to the property by her alleged purchase. In either case the action

of the Collector in cancelling the sale would be immaterial as an order passed without jurisdiction. The plaintiff might yet file such a suit, because

the present suit cannot be regarded as based on the correct cause of action, and if he succeeds on the merits, in so far as he may be found entitled

to possession of the land he may be met by no other difficulty. If he is not entitled to the land, but to the refund of the purchase-money, he may be

met by pleas of limitation. How far he can get over them is not a matter for me to anticipate. The present suit must be dismissed. I do not think the

1st defendant is entitled to any costs in these proceedings as, so far as the 1st defendant is concerned, I think the mistaken action of the Collector of Ramnad is the root of all these proceedings. This case shows how some Revenue Officers are incapable of conducting judicial proceedings under the Estates Land Act. In second appeal the plaintiff will pay one set of pleader's fees to be shared between Defendants Nos. 2 and 3 on the one hand (Rs. 20), and the 4th defendant on the other (Rs. 15). Only Defendants Nos. 2 and 3 will be entitled to the printing charges.