
(1948) 04 MAD CK 0024
In the Madras High Court

Mulukulla Kumaraswami

APPELLANT

Vs

Ghantasala Mahalakshamma and Another

RESPONDENT

Date of Decision : 08-04-1948

Acts Referred:

Citation : (1948) 61 LW 576 : (1948) 2 MLJ 232

Judgement

1. These are two appeals by father and son, judgment debtors in O.S. No. 107 of 1934 on the file of the Court of the District Munsif of Bezwada.

They arise out of two applications under Order 21, Rule 90 of the CPC for setting aside a sale held on 20th June, 1941. The decree-holder was

herself the purchaser. She purchased the properties in question which were sold as one lot for Rs. 1,010.

2. Applications were made in 1938 for the scaling down of the decree. The scaling down proceedings passed through several vicissitudes which it

is unnecessary to follow.

3. At the time when the sale was held, and in fact at the time of the filing of E.P. No. 548 of 1940 in which the sale was held, the applications for

scaling down stood dismissed and the amount due under the decree together with, execution costs stood, according to the execution, petition at the

figure of Rs. 1,131-5-5.

4. By reason of certain orders of this Court and consequential orders passed by the Court of the Subordinate Judge of Bezwada, the decree was,

subsequent to the sale, scaled down to Es. 321-1-6 together with subsequent interest thereon at 6½ per cent, per annum from 1st, October,

1937 plus Rs. 248 which represented the amount of costs together with interest thereon at 5 per cent, per annum. from 15th September, 1934. If

the amount due on 20th June, 1941, viz., the date of sale, is calculated in the light of the later orders scaling down the decree, it would appear that

there would, at that time, be due from the judgment-debtors only Rs. 621 and odd.

5. The short point which arises in these appeals is whether by reason of the subsequent scaling down of the decree to the extent already stated, the

sale is liable to be set aside. The principles governing cases of this description are laid down in two decisions of this Court in *Maganti*

Venkataswami Naidu Vs. Annapareddi Nagireddi alias Mutyalu Reddi, and Kuppa Sankara Sastri and Others Vs. Kakumanu Varaprasad and

Another, . In *Maganti Venkataswami Naidu Vs. Annapareddi Nagireddi alias Mutyalu Reddi, Wadsworth and Patanjali Sastri, JJ.*, observed that,

the true criterion seems to be to consider what would be the position had the appellate Court's decree been passed by the Court of first instance.

If the sale which has been held is one which would have been held even if the Court of first instance had decreed the amount eventually found due

in appeal, there is no legal or equitable reason for setting aside that sale or ordering restitution.

6. In *Kuppa Sankara Sastri and Others Vs. Kakumanu Varaprasad and Another, Wadsworth, J.*, followed the rule laid down in *Maganti*

Venkataswami Naidu Vs. Annapareddi Nagireddi alias Mutyalu Reddi, . The application of that principle to the facts which arose before the

learned Judge is significant. There, two items of property were sold in execution of a mortgage decree for Rs. 1,900 and Rs. 2,223, respectively,

the preliminary decree being for Rs. 4,119-7-4. The decree was subsequently scaled down to a sum of Rs. 1,728-9-0 and Rs. 493 costs with

subsequent interest amounting in all to Rs. 2,469. It was therefore apparent that even if the scaled down decree, is taken into consideration, after

the first item was sold for Rs. 1,900, there would still have remained an amount of approximately Rs. 569, due under the decree. Though the

second item realised, as already stated, Rs. 2,223, the sale of that item too was upheld because it was obvious that the decree as scaled down

would not have been satisfied by the sale of the first item alone. In the present case though there were three plots of land they were brought to sale

as one lot without apparently any objection. It could not be said that if the decree had been scaled down before 20th June, 1941, as it

subsequently was sealed down, there would have been no need to sell the property. Applying the principle laid down in the two decisions already

referred to, it seems to me that it cannot be maintained that the subsequent scaling down of the decree rendered the sale invalid.

7. The decision in *Kuppa Sankara Sastri and Others Vs. Kakumanu Varaprasad and Another*, is also authority for the position that it is not open

to an executing Court to refuse to execute the decree as it stands and that a sale held on foot of a decree which is not then scaled down but which

ultimately turns out to be one which is liable to be scaled down, is not invalid as offending against Section 7 of Madras Act IV of 1938.

8. Agreeing with the Courts below, I hold that the sale cannot be set aside on the ground which has been put forward. The appeals are accordingly

dismissed with costs.

9. Leave to appeal is refused.