

(1935) 03 MAD CK 0021
In the Madras High Court

Muthukaruppa Pillai alias Muthukaruppa Maniam (deceased),
Rajagopal Maniam and Others

APPELLANT

Vs

Annamalai Chettiar through his father and guardian
Somasundaram Chetti

RESPONDENT

Date of Decision : 08-03-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 125

Citation : AIR 1935 Mad 785 : 157 Ind. Cas. 896 : (1935) 42 LW 585 : (1935) 69 MLJ 297

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The only question argued in this Second Appeal arises u/s 125 of the Estates Land Act. The suit property which is

situate in the Kannivadi estate was jointly owned by two brothers Krishnasami Reddi and Ramasami Reddi. They seem to have become divided

sometime before 1893 and 1900 and in that partition the suit property is found to have fallen to the share of Ramasami Reddi; but as far as the

estate was concerned, pattahs continued to be issued to and received by Krishnasami Reddi as before. In 1901 Ramasami Reddi mortgaged the

suit property to the plaintiff's husband. A suit was brought on the mortgage in July 1915 and ultimately the plaintiff's husband became the court

auction-purchaser. In August 1915, the suit property was brought to sale by the Kannivadi estate for arrears of rent and brought in by the estate

itself and later on it was conveyed to the first defendant in this suit in 1917. When the plaintiff's husband attempted to take possession of the

properties as court auction purchaser in execution of the mortgage-decree he was resisted by the first defendant and hence this suit.

2. On behalf of the defendants, who are the appellants before me, it has been argued that as Krishnasami Reddi continued to be the pattadar all

along, a rent sale under the Estates Land Act was operative to pass the property in the land to the purchaser and extinguish all rights which any

person who is not a registered pattadar may possess in the land. This contention has been overruled by both the lower courts and hence this

second appeal.

3. Section 125 of the Estates Land Act provides that a purchaser in a rent sale shall take subject to ""any encumbrances created before the passing

of this Act"". The legislature has not specified the person by whom the said encumbrances should have been created. It is argued on behalf of the

appellants that in the context the words must be read as only saving encumbrances created by a ryot and that a ryot as understood according to

the definition in the Estates Land Act. I do not see any justification for importing these additional ideas into the section. Indeed it seems to me they

cannot fairly be imported, when one remembers the state of the law before the Estates Land Act and the principle underlying this reservation in

Section 125. Before the Estates Land Act, rent was not a first charge on the holding and a sale for arrears of rent could only pass the interest of

the ryot as it stood on the date of the sale. See *Ekambara Ayyar v. Meenatchi Amma* I.L.R.(1903) 27 Mad. 401 When the Estates Land Act

made the rent a charge on the holding, it was accordingly considered right that all encumbrances created prior to the Act should be saved from

extinction as a result of any rent sale that may thereafter take place. The kind of encumbrances thus intended to be saved must reasonably be all

encumbrances which under the law as it stood prior to 1908 would have been valid encumbrances. There is no reason whatever to limit them to

encumbrances created by a person who would satisfy the definition of a ryot under the Estates Land Act, because under the prior law it was quite

conceivable that a person who held a pattah for the land may nevertheless be incapable of creating a valid encumbrance therein if he was not really

the owner at the time. In the Act of 1908, Section 147 introduced the provision that a transferee who does not give notice to the estate authorities

will be bound by all proceedings taken against his transferor. This was not the law before. The prevailing view then was that the moment a transfer

is made the transferor ceased to be a tenant, the transferee became the tenant and it was the duty of the landlord to seek out the real tenant, so that

all proceedings taken against the transferor would be futile at any rate if notice of such proceedings had not been given to the transferee. See

Ekambara Ayyar v. Meenatchi Ammal I.L.R.(1903) 27 Mad. 401 Peram Narasigadu Vs. Machiredi Butchireddi and Others, , Kesavasami Aiyar

v. Narayana Chetty (1912) 24 M.L.J. 228. The result is that under the older law it was only the real owner of the holding that could create any

encumbrance on the property and not the person who happened to hold a pattah for that holding. It will thus defeat the intentions of Section 125 if

we are to assume that the reservation there must be restricted to encumbrances created by the holder of the pattah, independently of the question

whether he was a person entitled to the land or not.

4. In this view the courts below were right, in holding that the mortgage created in favour of the plaintiff's husband by Ramasami Reddi was an

encumbrance saved by Section 125, though the pattah continued to be issued to his brother Krishnasami Reddi. The Second Appeal fails and is

dismissed with costs.