
(1993) 09 MAD CK 0083
In the Madras High Court
Case No : C. R. F. No. 2669 of 1992

Mylsamy and 4 others

APPELLANT

Vs

The Dharapuram Co-operative Primary Land Development
Bank

RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Registration Act, 1908 — Section 17, 17(2)(xii), 18(l)

Citation : (1993) 09 MAD CK 0083

Hon'ble Judges : Abdul Hadi, J

Bench : Single Bench

Advocate : A.K. Kumaraswamy, for the Appellant; D. Krishnakumar, for the Respondent

Final Decision : Allowed

Judgement

Abdul Hadi J.

1. Respondents 2 to 6 in E. A. No. 44 of 1991 are the petitioners in this civil revision petition. The said E. A. No. 44 of 1991 is by the respondent

herein, viz., the Dharapuram Co-operative Primary Land Development Bank, praying for delivery of possession of the property purchased by it in

the auction sale conducted under Chapter IV of the Tamil Nadu Co-operative Land Development Banks Act X of 1934. The said Bank was the

mortgagee of the above said property and the mortgagor therein was the predecessor of the petitioners herein and under the mortgage deed the

bank was entitled to sell the mortgaged property for the realisation of the mortgage sum due, without the intervention of the Court, pursuant to the

provisions contained under the above said Chapter, and accordingly in the sale effected, the said bank itself has purchased the property and the

said sale has been confirmed pursuant to the provisions contained in the said Chapter IV on 30.12.1978. But, the sale certificate was issued under

S. 17 of the said Act, coming within the said Chapter only on 23.12.1989. The above said E. A. No. 44 of 1981 was subsequently filed on

9.10.1990 for delivery of possession of the said property. The said execution application has been allowed by order dated 17.8.1992. Aggrieved

by the said order, this civil revision petition has been filed. The only point urged before me by the learned counsel for the petitioners is that the

above said execution application has been filed out of time and the court below erred in not having dismissed the said execution application, on the

ground of limitation. Though initially the learned counsel submitted that Art. 134 of the Limitation Act would apply to the present case, the counsel

subsequently gave up that argument and pressed into service the argument that residuary Art. 137 would apply and as per the said Article, the said

execution application was out of time. I may incidentally mention Art. 134 . It would apply only if the above said sale was in execution of the

decree. But, admittedly in the present case, there was no decree as such. So Art. 134 will not definitely apply. No doubt, if Art. 134 applies, the

starting point of limitation is one year from the date when the "sale becomes absolute".

2. But since only Art. 137 applies, I shall deal with it now. It runs as follows:137. Any other application Three When the right to for which no

period of limitation years apply accruestion is provided elsewhere in this Division Thus, this is a residuary Article and the starting point of limitation

as per this Article 137 is the date "when the right to apply accrues" and the period of limitation is three years. According to the learned counsel for

the petitioners the right to apply for delivery in the present case, accrues when the sale is confirmed or has become absolute i.e. on 30.12.1978,

when the title in the property purchased, passed to the buyer-bank and since the above said execution application has been filed long after the

expiry of three years from the said date, only on 9.10.1990, the. execution application is out of time. In this connection, he relies on the decision in

Abdul Subhan Sahib v. Ramanna AIR 1945 Madras 161 :58 L.W.163 (F.B.)) to substantiate his contention that title passes once the sale

becomes absolute, and also the decision in Babulal v. Annapumabai AIR 1953 Nagpur 215 (D.B.) to substantiate his contention that even before

the issuance of the sale certificate an application for delivery could be made under O. 21, R. 95, C.P.C., which is almost identical with the above

said S. 18 of the above said Act.

3. On the other hand, the learned Counsel for the respondent-bank contends that the starting point of limitation is only the date when the sale

certificate was issued, that is, 23.12.1989 and that hence the execution application is within time. So, the only point that has to be seen is when

actually the starting point of limitation begins in the present case. Is it from 30.12.1978 or from 23.12.1989?. The learned counsel for the

respondent also submits that till sale certificate is issued, the petitioners could redeem the mortgage by making necessary payment and that hence

the right to apply would accrue only from the date of sale certificate, viz., 23.12.1989. In this connection, he also relies on the decision in

Narandas Karsondas Vs. S.A. Kamtam and Another, He also submits that as per S. 18 of the above said Act, which is very much identical with

O. 21, R. 95 C.P.C, only after the grant of sale certificate under S. 17 of the above said Act (which is very much identical with O. 21 R. 94

C.P.C.) the purchaser can file an application for delivery.

4. I have considered the rival submissions. The above said Ss. 17 and 18(1) of the above said Act run as follows:-

S. 17. Where a sale of mortgaged property has become absolute, the sale officer shall grant a certificate specifying the property sold and the name

of the person who at the time of the sale is declared to be the purchaser. Such certificate shall bear date, the day on which the sale became

absolute 18.(1) Where the mortgaged property sold is in the occupancy of the mortgagor or of some person on his behalf or of some person

claiming under a title other than a lease for a period of not exceeding five years created by the mortgagor subsequent to the mortgage in favour of

the primary land development bank, and a certificate in respect thereof has been granted under S. 17, the Court shall, on the application of the

purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf, in

possession of the property.

O. 21, R. 94 and 95(1) C.P.C. run as follows:-

R. 94. Certificate to Purchaser:- Where a sale of immovable property has become

absolute, the Court shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear date the day on which the sale became absolute R. 95. Delivery of property in occupancy of Judgment Debtor-(I) Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under R. 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property and, if need be, by removing any person who refuses to vacate the same.

But, on reading O. 21, R. 95(I) of the above said S. 18(I) C.P.C. at the first blush, it may appear that the application for delivery has to be made after the sale certificate has been granted. But, while interpreting the terminology used in O. 21, R. 95 (1), C.P.C. a Division Bench of the Nagpur High Court in A.I.R.1953 Nagpur 215 (supra) has held in a case where the application for delivery was filed without obtaining the sale certificate, as follows:-

Such a certificate (sale certificate) would entitle the respondent to obtain possession under R. 95 of O. 21. There is nothing in that Rule to make it incumbent for the purchaser to file the certificate along with his application. On the confirmation of the sale it is compulsory to issue the certificate.

The failure to issue the certificate whether the delay arises due to the action of the Court or to the inaction of the purchaser has no bearing on the limitation for the application under Art. 180. The purchaser cannot seek to extend the limitation on the ground that the certificate has not been issued. It is patent, therefore, that the issue of a certificate is not the "since qua non of the application.

5. No doubt, the above said observation in the Nagpur decision was made in the context of old Article 180 of the old Limitation Act, corresponding to Article 134 of the new Act. But any way, the above said observation made is general and according to the above said observation, the issue of sale certificate is not the sine qua non of the application

for delivery. Further in AIR 1945 Madras 161 : 58 L.W. 163

(F.B.) (supra) this Court has also held that once the sale has been confirmed by the Court, it confers absolute title on the auction purchaser,

whether he be the decree holder or a stranger, provided there was title in the judgment-debtor. Further, in view of S. 17(2)(xii) of the Registration

Act, the sale certificate issued by the Sale Officer under the above said Act does not require registration.

6. It has also been held that sale certificate does not create any title, but is merely evidence of title, (vide Gopal Singh v. Hukum Singh AIR 1950

Allahabad 644. Title is based on the purchase arid not on the certificate. (Vide Chidambaram v. Rangasamy Thewar AIR 1938 Madras 232. Title

can be proved independently of the certificate. (Vide Rahmathulla Khan v. Mahabirsingh AIR 1956 Nagpur 132.

7. In the light of the above decisions, I concur with the view taken by the Nagpur High Court in the above referred to decision and since S. 18(I)of

the above said Act is also identical with O. 21, R. 95(1) C.P.C. I hold that even in the present case, the right to apply for delivery would accrue

from the date of confirmation of the sale, viz. 30.12.1978 itself. If that is so, the above said execution application is certainly out of time. The

Supreme Court decision cited by the learned Counsel for the respondent, namely Balwant Singh & others v. Gurbachan Singh & Others 1993(i)

L.W.245 (S.C.) will have no application to the facts of the present case.

8. Further, A.I.R.1977 S.C.774 (supra) will have no application to the present case since it is a case of private sale, where registration of the sale

deed is compulsory as per S. 17 of the Registration Act. That is why it has been held in the said decision that the sale is complete only when

registration takes place. But, that is not so in the present case where registration is not compulsory and Courts have held as indicated above that

title passes once the sale is confirmed.

9. Further, no doubt in A.I.R.1977 S.C.774 (supra) it has also been observed that ""the mortgagor"s right to redeem will survive until there has

been completion of sale by the mortgagee by a registered deed."" But, in the present case, since registration is not required, sale is complete as

soon as the sale is confirmed and the issuance of the sale certificate is only a ministerial act, which necessarily the concerned Authority under the

above said Act has to grant. Therefore also A.I.R.1977 S.C.774 (supra) will have no application to the present case, even though the present case also may be described as a private sale and not a sale through the intervention of Court. The net result is, the above said execution application is out of time and hence the impugned order of the Court below is set aside and the civil revision petition is allowed. However, in the circumstances of the case, there will be no order as to costs.