(1952) 02 KL CK 0004

In the High Court Of Kerala

Case No : C.R.P. No. 890 of 1950

Neelakantaru Narayanaru APPELLANT

Vs

Govinda Pillai Kuttan Pillai RESPONDENT

Date of Decision : 21-02-1952

Acts Referred:

Transfer of Property Act, 1882 — Section 52
Travancore Jenmi and Kudiyan (Amendment) Act, 1108 — Section 26A(4), 9
Travancore Revenue Recovery Act, 1068 — Section 39

Citation : (1952) 02 KL CK 0004

Hon'ble Judges : Vithayathil, J;Gangadhara Menon, J

Bench : Division Bench

Advocate : G. Velu Pillai, for the Appellant; M.P. Ramakrishna Pillai, for the Respondent

Final Decision : Dismissed

Judgement

Vithayathil, J.—The decree-holder in O.S. No. 6 of 1120 of the District Munsiff''s Court of Adoor is the Revision Petitioner. The decree is for redemption of a mortgage. During the pendency of the suit item No. 5 of the plaint schedule properties was sold in revenue auction for arrears of jenmikarom due on that property and was purchased by the counters, Petitioner. He obtained delivery of possession of the property as per the revenue sale. When the decree-holder applied for delivery of this property the counter Petitioner obstructed and the Court below allowed the obstruction petition. The Revision is from that order.

2. The only question that arises for consideration in this revision is whether the revenue sale, is affected by ''lis pendens'' by reason of the pendency of the suit in redemption. In -''Janaki Amma v. Dewan of Travancore'' 1949 KER LR: 36 (A) a Division Bench of the Travancore High Court held that a revenue sale of property which was the subject-matter of a partition suit was vitiated by ''lis pendens''. That was a suit for setting aside the revenue sale which took place during the pendency of the suit for partition. It was held that the revenue sale

was not binding on the tarwad as the karnavan of the tarwad was not a party to the revenue proceedings. It was also held that the revenue sale was vitiated by ''lis pendens''.

This decision was however not followed by this Court in -''Eravi Krishna Karthavu v. Kumarar swami Namppothiripad'' 1950 Ker LT 322 (B) which is a decision by a Single Judge. Both these decisions were considered by us in - ''Raman Nair v. Lakshmi Amma'' AIR 1952 KER 96 (C). We held in that case that the principle underlying Section 52, T.P. Act relating to ''lis pendens'' does not apply to cases of revenue sale for arrears of tax due on the property. That case was decided on 4-9-1951. Another Division Bench of this Court considered the same question in the case reported'' in - ''Kesavan Karunakaran v. Raman Kesava'' AIR 1952 KER 230 (D) which was decided on 6-9-1951. In that case also it was held that for application of the doctrine of ''lis pendens'' will not extend to a revenue sale held during the pendency of a suit. Since the question has been elaborately discussed in the above cases we do not think it necessary to discuss it again in this revision.

3. It was however argued on behalf of the Revision Petitioner that the revenue sale in this case was not for arrears of tax due on the property but was for arrears of jenmikarom. u/s 39, Travancore Revenue Recovery Act (Act 1 of 1068) all lands brought to sale on account of arrears of revenue due thereon shall be sold free of all encumbrances. It is argued that this provision will not apply to sale of lands under the Revenue Recovery Act for arrears of jenmikarom. It is therefore argued that the principle laid down in the decisions in - ''1950 Ker LT 322 (B)''; ''AIR 1952 Trav-C 96 (C)'' and - AIR 1952 KER-C 230 (D) does not apply to the facts of this case.

4. In this case we are not concerned with the question whether a sale of property under the Revenue Recovery Act for jenmikarom due on the property will extinguish all encumbrances on the property. The decree-holder he has no case that has a charge on the property and that it was not extinguished by the revenue sale. He was the owner of the equity of redemption of the property and his suit was for redeeming a mortgage. The question for consideration is whether the revenue sale extinguished his title to the property.

What is laid down in Section 52, T.P. Act is that during the pendency of a suit in which any right to immovable property is in question the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding, so as to affect the right of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may enforce. The section only prohibits a party to a suit or proceeding from dealing with the property so as to affect the rights of the other party thereto. In this case it cannot be said that a party to the suit transferred or otherwise dealt with the property which was the subject-matter of the suit to the prejudice of any other party.

In - AIR 1952 KER 230 (D) cited above this Court held that the inhibition of

Section 52

is only against any of the litigant parties dealing with the property forming the subject of the litigation so as to affect the rights of any other party thereto under any decree or order which may be made therein.

5. It is true that the principle underlying Section 52, T.P. Act is applicable, to involuntary sales also, but it does not apply to revenue sales for arrears of land revenue or other dues which constitute a first charge on the property. u/s 9, Travancore Jenmi and Kudiyan Act'' as amended by Act 12 of 1108 jenmikarom of a holding is a first charge on the holding subject to the priority of the rights of the State. Section 26A (4) provides that jenmikarom shall be recovered as if it were an arrear of public revenue due to Government and that the provisions of the Revenue Recovery Act shall ''mutatis mutandis'' apply to the proceedings. Apart from the question whether Section 39 of the Revenue Recovery Act will apply to a sale of land for arrears of jenmikarom due thereon, we have no doubt that such a sale will not come within the purview of Section 52. T.P. Act.

In - Ponnuswami Chettiar Vs. Ellasari Obul Reddi, it was held by the Madras High Court that a revenue sale held under the Madras Estates Land Act for arrears of rent due from the ryot to the landholder was not affected toy a pending suit on a mortgage executed by the ryot. This decision is referred to in - '' AIR 1952 KER 230 (D)'' and the following observation of Wadsworth J. repelling the contention that the sale was vitiated by ''lis pendens'' is quoted with approval in that case:

This contention overlooks the fact that the sale by the Collector was in fact a sale held to enforce the paramount right of the landholder to his rent, which u/s 5, Estates Land Act, is a first charge on the land. I have no hesitation in holding that the sale by the Collector for arrears of rent of the land on which those arrears were due to the landholder is not affected by a pending suit on a mortgage executed by the ryot who is in default.

Reference may also be made to an earlier decision of the Madras High Court reported in - ''Munisami v. Dakshna Murthi'' 5 Mad 371 (F). That case also related to a sale under the Revenue Recovery Act for arrears of rent due to the landholder from the ryot. The sale was conducted during the pendency of a suit on a hypothecation bond executed by the ryot. It was held that the revenue sale was not affected by the doctrine of ''lis pendens.''

6. We therefore hold that the revenue sale held in this case for arrears of jenmikarom due on the property during the pendency of the redemption suit is not vitiated by ''lis pendens''. The order of the Court below is confirmed and this revision petition is dismissed with costs.