(1919) 03 MAD CK 0004

In the Madras High Court

N.P.R.L.M.S.T. Lakshumanan Chettiar and Another — APPELLANT

Vs

Parasivan Pillai and Others — RESPONDENT

Date of Decision : 19-03-1919

Acts Referred:

Limitation Act, 1963 — Article 11

Citation : (1919) 37 MLJ 159

Judgement

1. This is an appeal from a decree of the Court of the Subordinate judge of Tuticorin holding that a suit on a mortgage was not barred by limitation,

the point taken before us being that the suit was barred. The bar is said to arise under Article 11 of the Limitation Act and purports to be based on

the failure of the plaintiff in this suit to bring his suit within one year from the date of the disposal of a certain objection petition. The lower Appellate

Court has held that though the proceedings were under Order 21 of the Code of Civil Procedure, they were not in a claim petition instituted under

Rule 58 but were proceedings in settling a proclamation under the provisions beginning with Rule 64, namely, "" sale generally."" The learned

Subordinate Judge has not given any reasons in his judgment but it is sought to be supported by a ruling to be found in the decision of the High

Court of Bombay in Ganeshkrishna v. Damoo ILR (1916) Bom. 64. There is some slight difference in the procedure in that case and in this case

but the High Court certainly considered the question on the assumption that there was an objection taken u/s 278 corresponding to Rule 58, yet

they held that the order was not one passed u/s 283 and that therefore there was no bar of limitation. It has been pointed out however by a Full

Bench of this Court in Vtnkalarathnam v. Ranganayakamma ILR (1918) Mad. 885 that under the new Code, the powers of a Court dealing with objections are much wider than under the old Code. The learned Chief Justice points out that under the old Code, Section 28.3 corresponding to

Rule 63, was definitely limited by its own language to the three preceding Sections 280, 281 and 282 and that it was only where an order had been

passed under Sections 280, 281 and 282 that the order was conclusive in the absence of a suit; whereas under the present Rule 63, the words

being ""where a claim or an objection is preferred,"" it necessarily follows that where any claim is made under Rule 58 then any order that is passed

comes within the mischief of Rule 63. It is clear therefore that the decision in Ganesh Krishna v. Damoo ILR (1916) Bom. 64 has no application to

the present case. In the present case the claim made is to be found in Exhibit II. In that, claimant asks that an order should be passed directing that

it should be notified at the sale on 9-2-1912 that the petitioner''s mortgage has not been discharged, and the proclamation of sale amended

accordingly and the sale should be held subject to the mortgage."" The order was ""The sale comes off to-morrow. The sale proclamation notifies

existence of a mortgage but says it has been discharged. Enquiry cannot now be held whether it has been discharged. Petition dismissed"". It see ns

to us perfectly clear that the provisions of Rule 58 cover the claim setting up mortgages and the liability of the property to the mortgage at the time.

There can be no doubt that the Court can deal and could deal under the old Code with the liability or non-liability of the property to a mortgage,

Ganesh Krishna v. Damoo ILR (1916) Bom. 64 being an authority for that proposition because one particular form of order in that respect is

definitely provided for in Rule 62 and in the old Section 282 and it necessarily seems to follow that if one particular form of order on the claim on a

mortgage can be passed, then any claim with respect to an alleged mortgage or existing liability of the mortgage must be a claim under Rule 58. For

these reasons, we are satisfied that a claim was made under Rule 58 although the objection did not purport to be put in under that rule and that it

was disposed of by an order which is governed by Rule 63. This is the view taken in a case in Ponnusami Pillai Vs. Samu Ammal and Others, with

which we concur. The result is that the suit having been brought more than a year from the date of the order is barred by limitation. The appeal

must be allowed and the suit dismissed with costs throughout.

