

(1975) 02 MAD CK 0015
In the Madras High Court
Case No : Appeal No. 844 of 1970

P. Nagappan

APPELLANT

Vs

H.A. Ramaswamy Chettiar and Others

RESPONDENT

Date of Decision : 06-02-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 9
Revenue Recovery Act, 1890 — Section 6

Citation : (1975) ILR (Mad) 451 : (1975) 88 LW 610 : (1975) 36 STC 408

Hon'ble Judges : Ratnavel Pandian, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : N. Sivamani and T.G. Ramachandran, for the Appellant; C. Harikrishnan and K. Venkataswami, First Additional Government Pleader for Commercial Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—The fourth defendant is the appellant. The plaintiffs laid an action on a mortgage deed dated 27th September, 1957,

marked as exhibit A-1 in the case, impleading defendants 1 to 3, who were the persons interested in the hypotheca as mortgagors. As we shall

presently state, it may not be quite necessary for us to treat at length on the pleading relating to the mortgage and the basis of the claim. In fact, the

plaintiffs, as mortgagees, released, under exhibit A-2 dated 29th March, 1963, one portion of the hypotheca after obtaining the consideration

therefor. The result was that the plaintiffs came to the court on the foot of the mortgage deed (exhibit A-1) for sale of the suit property which was

the property not released by them under exhibit A-2. The plaintiffs were conscious of the fact that prior to their coming to court, the Commercial

Tax Officer, Erode, publicised the suit property for a public sale on the ground

that the mortgagors were in arrears of Central sales tax. The plaintiffs' case is that the fourth defendant, in such a public auction held on 28th December, 1965, by the Commercial Tax Officer, purchased the same and obtained a sale certificate on 1st March, 1966, under exhibit B-3 of which exhibit B-4 is a carbon copy. The plaintiffs' specific allegation is that the auction held by the Commercial Tax Officer, Erode, would not bind him and, in any event, as the fourth defendant is only a subsequent purchaser in the sense that the mortgage is prior to the purchase, their rights are unaffected and that they would be entitled to the usual mortgage decree as against the hypotheca without reference to the sale conducted by the State for the recovery of tax arrears of the mortgagors. It was in those circumstances, the plaintiffs, after issuing a registered notice dated 22nd January, 1966, under exhibit B-6, filed the action and sought for a mortgage decree.

2. Defendants 1 to 3, obviously, remained ex parte. The fourth defendant's contention is that he was not aware of any encumbrance over the suit property and as it was publicised under exhibit B-1 that the property was being sold free of encumbrances, he participated in the auction and purchased the same. In the alternative, he would plead that as the sale was held under the provisions of the Central Sales Tax Act read with the Tamil Nadu General Sales Tax Act and the Tamil Nadu Revenue Recovery Act, the sale should be deemed to be free of all encumbrances and that his property should be held to be not burdened with the suit mortgage.

3. The learned trial Judge, after framing the relevant issues, passed the usual mortgage decree and did not agree with the contentions of the fourth defendant. It is, in these circumstances, that the fourth defendant has come up in appeal.

4. We have already said in the beginning that for the purpose of a decision in this case, it is not necessary to traverse orthodoxically the pleadings relating to the mortgage, as, practically, the plaintiffs secured an ex parte decree and in so far as the grant of a mortgage decree by the court below is concerned, it shall stand.

5. The only question agitated before us by the learned counsel for the appellant is that as the appellant was a purchaser in a public sale held by the tax recovery authorities for the recovery of arrears of tax from a defaulter and as

the sale was in relation to the defaulter's property and as it was conducted under the provisions of the Revenue Recovery Act, then u/s 42 of the said Act, the sale shall be deemed to be free of all encumbrances.

If the process of the sale is thus understood and interpreted, the fourth defendant's title to the property is unimpeachable and should be held free from the suit mortgage. Mr. Sivamani, the learned counsel for the appellant, took us through the relevant provisions of the Central Sales Tax Act, the Tamil Nadu General Sales Tax Act and the Revenue Recovery Act and contended that the sale in the instant case should be one which was initiated, conducted and concluded under the provisions of the Revenue Recovery Act and that the tax arrears should, in the circumstances and in the light of the statutory provisions, be deemed to be public land revenue, and that, therefore, a sale to recover such land revenue, though held by a statutory functionary under the provisions of the Central Sales Tax Act read with the Tamil Nadu General Sales Tax Act, should be upheld as being free from all encumbrances. As this matter relates to revenue and, particularly, sales tax, we requested the learned Additional Government Pleader, who is specially in-charge of sales tax cases, to assist us to arrive at a decision in this case. The learned Additional Government Pleader as also the learned counsel for the appellant brought to our notice certain decisions. On a conspectus of the ratio in those decisions before us, we are unable to dislodge the finding rendered by the trial Judge that the fourth defendant should, in the circumstances, be held to have not purchased the property free from all encumbrances.

6. Section 9(2) of the Central Sales Tax Act provides that the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, etc., and for the purposes of the Act, the authorities may exercise all or any of the powers they have under the general sales tax law of the State. It is necessary, therefore, to see the Tamil Nadu General Sales Tax Act of 1959 to find out what are the powers which can be exercised by the taxing authorities under the Central Sales Tax Act. Section 24(2) of the Tamil Nadu General Sales Tax Act provides that any tax assessed, or any other amount due under this Act from a defaulter or person, etc...may, without

prejudice to any other mode of collection, be recovered as if it were an arrear of land revenue, etc... u/s 29, a Commercial Tax Officer shall have the powers of a Collector under the Revenue Recovery Act (Tamil Nadu Act 2 of 1864), for purposes of recovery of any amount due under this Act. It is necessary, at this stage, to refer to the relevant provisions of the Revenue Recovery Act. The preamble to this Act makes it clear that it is an Act to consolidate the laws for the recovery of arrears of revenue in the Madras Presidency. "Public revenue", as denned in Section 1 of the Act, is referable to such revenue due on land and shall, for the purposes of the Act, be taken to include cesses or other dues payable to the State Government on account of water supply for irrigation, etc., and includes assessment, quit rent, ground rent or other charge upon the land payable to the State Government. Section 6 provides for the procedure which enables the Collector to recover arrears of revenue in the manner provided therein. To recover such arrears, the defaulter's movable or immovable property could be sold. Then, the relevant section which is necessary for our consideration is Section 42. That section says :

All lands brought to sale on account of arrears of revenue shall be sold free of all incumbrances, and if any balance shall remain after liquidating the arrears with interest and the expenses of attachment and sale and other costs due in respect to such arrears, it shall be paid over to the defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction.

7. What is urged before us is that the sale conducted by the Commercial Tax Officer and the certificate issued by him under exhibit B-3 to the fourth defendant, no doubt, would appear to be a process springing from the provisions of the Revenue Recovery Act. But, the learned counsel for the respondents would say that, nevertheless, such a sale cannot be held to be free from all encumbrances in general and the suit mortgage in particular. The provisions of the Revenue Recovery Act and the allied enactments such as the Land Improvements Loans Act of 1883, the Tamil Nadu Agricultural Produce Markets Act of 1959, the Tamil Nadu Agricultural Income Tax Act of 1955, the Tamil Nadu City Municipal Corporations Act, the Tamil Nadu Court Fees and Suits Valuation Act, the Tamil Nadu Courts of Wards Act, the Tamil Nadu Sales of Motor

Spirit Taxation Act, the Tamil Nadu Private Forests (Assumption of Management) Act, the Tamil Nadu Electricity Duty Act, the Tamil Nadu

Entertainments Tax Act and other similar enactments are all Acts which do have a particular public purpose to serve. The cess or the levy under

the Revenue Recovery Act or the loans lent in connection with such land from the public exchequer or such levy made on land are bound to be

repaid by the borrower since such cess or levy has relation to the land and since the loan has come from public exchequer. It is significant to note

that in the Revenue Recovery Act and the other Acts, referred to above, stress is made on "land" and "the ways and means of recovery of moneys

lent by the Government towards the improvements of such lands or for the recovery of such assessment, levies, or cesses made in relation to such

land". Such moneys are payable to the public exchequer and avoidance of such payment is, therefore, against public interest. It is this vein which

runs in such legislations that has compelled the legislature to provide a section like Section 42 of the Tamil Nadu Revenue Recovery Act (2 of

1864). It is in that context, the section declares that all lands brought to sale on account of arrears of revenue shall be sold free of all

encumbrances. The accent, therefore, is generally made on the expression, "public revenue" and, if any arrear in that context arises, the law

declares that the purchaser, in such a public auction of the land, which is charged with the payment of such public revenue, is freed from prior

encumbrances. But, in a case where taxes are payable by a citizen, there is no such equivalent provision which makes the sales of the properties of

the defaulter in the payment of taxes such as sales tax, Income Tax, abkari revenue, etc., free from prior encumbrances. The reason is obvious.

Tax is the resultant of a voluntary commercial activity on the part of a citizen and it is not an impost or levy made by the State for something done

by it or by virtue of a prerogative right vested in it. There may be special enactments which might make an exception in the above matter. It is, no

doubt, true that in cases where default is made in the payment of taxes, as above enumerated, the provisions of the Revenue Recovery Act are

referred to and the sale is ordained to be conducted under the provisions of the Revenue Recovery Act. Unless otherwise provided, the common

phraseology adopted by the taxing statute in relation to such sales of properties of the defaulter, so as to invoke the provisions of the Revenue

Recovery Act, are generally arrayed thus : (a) in like manner as for the recovery of arrears of land revenue, (b) as if they were arrears of land

revenue, (c) shall be deemed to be land revenue and (d) may be recovered as land revenue. A dichotomy, therefore, has been maintained between

one statute and another in the matter of the invocation of the provisions of the Revenue Recovery Act. Whilst some statutes such as the Tamil

Nadu General Sales Tax Act would say that the arrear of tax shall be collected "as if it were an arrear of land revenue", some similar enactments

adopt the expression, "in a like manner as for the recovery of land revenue". But, the legislative intent is to collect such arrears, cesses or levies by

a sale of the property of the defaulter, but not by making it free from all prior encumbrances. If such an intent was envisaged they would have used

the expression that such arrears "shall be deemed to be land revenue" or "shall be recovered as land revenue". This fiction essentially creates the

division. Regard for public welfare is, undoubtedly, the highest law and it is contained in the expression "salus populi supremo, lex". But, the priority

of the State debt cannot, unless otherwise provided by a particular statute, prevail as against a prior secured creditor such as a mortgagee or a

charge-holder so as to completely efface his security and prejudice his rights as a secured creditor. As between an unsecured creditor and the

State, the above doctrine of priority of State debts will ordinarily be attracted. But, this rule cannot be automatically extended so as to extinguish

the rights of the secured creditors and prefer State debts if such a competition arises, In the ultimate analysis, therefore, it depends upon the

language of a particular statute, and if a statute says that the arrears of tax or cess or assessment, etc., are "deemed to be land revenue", or may be

recovered as land revenue", then, by such operation of a fiction the sale which follows for the recovery of such arrears would be free from prior

encumbrances. But, if such a similar sale is undertaken for recovery of tax "as if it is a land revenue", or "in a like manner as for recovery of arrears

of land revenue", then, in our view, it would not be free from prior encumbrances. We are supported by high authority for our conclusion.

8. In *Ramachandra v. Pitchaikanni* ILR (1884) Mad. 434, a Division Bench of this Court, considering the expression "in like manner as for the

recovery of arrears of land revenue", held that such a sale did not pass the property free of prior encumbrances. This decision was followed by

another Bench of our Court in Ibrahim Khan Sahib v. Rangaswami Naicken ILR (1905) Mad. 420, which was again a case in which the question

for consideration was whether the purchaser at an auction for recovery of arrears due by an abkari renter, got the land free of all encumbrances. In

the old Abkari Act, as the learned Judge pointed out, arrears could be recovered ""in like manner"" as for the recovery of arrears of land revenue. In

the later enactment, the provision was that abkari arrears should be recovered ""as if"" they were arrears of land revenue. Considering both these

enabling provisions, the Division Bench followed the earlier decision reported in Ramachandra v. Pitchaikanni ILR (1884) Mad. 434 and said that

the sale did not pass the property free of all encumbrances. In Satyam Vs. Krishna Murthy and Others, , Venkatesam, J., followed the decisions of

our court and held that the sale for recovery of arrears of Income Tax subsequent to a mortgage on the property which was the subject-matter of

such sale did not have the effect of superseding the rights of the mortgagee, nor giving any priority over the rights of the mortgagee. The provision

in the Income Tax Act was that such arrears of Income Tax could be recovered from the defaulter ""as if"" it is an arrear of land revenue. Finally, in

Collector of Tiruchirapalli Vs. Trinity Bank Ltd., Trichirapalli and Another, , a Full Bench of our Court had occasion to consider, though not

directly, but indirectly, the question as to in what circumstances a Crown debt would have preference over a private debt. Jagadisan, J., speaking

for the Bench, said:

It is but natural that a debt due to the Crown, as representing the public at large, should be preferred to the debt of a single creditor. But this rule of

priority in favour of the Crown for the realisation of its dues can only prevail and be enforceable as between unsecured creditors of equal degree,

there being no question of any lien, charge or mortgage in favour of one or other of such creditors. The priority of the Crown cannot rank as

against a secured creditor so as to deprive him of his security or to affect or injure his rights as such secured creditor.

9. The authorities, therefore, need not be multiplied. But, the learned counsel for the appellant referred to a decision of Somayya, J., in The

Secretary of State for India in Council Vs. Sait Jodaraj Dhupajee (died) and Others, . That was a case where the learned Judge was considering

the recovery of public revenue under the Tamil Nadu Land Encroachment Act. A penal assessment was made u/s 9 of the said Act. For recovery thereof, the land of the pattadar was sold. While considering that aspect, the learned Judge said that Section 9 of the Land Encroachment Act equates the penal assessment levied under it to land revenue and provides that it may be recovered as land revenue. It was in those circumstances, the learned Judge said that the resultant sale would be free from encumbrances. In his turn, he referred to Ramachandra v. Pitchaikanni (1884) ILR 7 Mad. 434 and Ibrahim Khan Sahib v. Rangaswami Naicken ILR (1905) Mad. 420, and would affirm the proposition that if the sale under any particular enactment is held for the recovery of arrears of public revenue, as if it were a land revenue, then such sale would not be free from prior encumbrances. On the other hand, if such a public sale is for recovery of land revenue or for money deemed to be land revenue or money recoverable as land revenue, then the spirit and letter of Section 42 of the Revenue Recovery Act would directly apply and the resultant of such impact would be that the sale would be free from all encumbrances.

10. We are, therefore, unable to agree with Mr. Sivamani, having regard to the weight of authorities against him, that a sale under the Central Sales Tax Act read with the provisions of the Tamil Nadu General Sales Tax Act, which provides for the recovery of arrears of Central sales tax or sales tax as if it were land revenue, would make the purchaser a person who could own the property so purchased in a public sale free from all prior encumbrances. The learned Judge was right in having upheld the claim of the plaintiffs. The fourth defendant is bound by the mortgage. The judgment of the trial court is correct. The appeal is dismissed. In the peculiar circumstances of the case, there will be no order as to costs. We are thankful to the learned Additional Government Pleader for the timely assistance rendered by him.