
(1949) 09 MAD CK 0002

In the Madras High Court

Case No : Second Appeal No. 380 of 1947

P.A. Munusami Reddi and Others

APPELLANT

Vs

C.N. Thirunavukkarasu Mudaliar and Another

RESPONDENT

Date of Decision : 09-09-1949

Acts Referred:

Madras Estates Land Act, 1908 — Section 112, 113

Citation : AIR 1950 Mad 764 : (1942) 55 LW 177

Hon'ble Judges : Chandra Reddi, J

Bench : Single Bench

Advocate : V.N. Shama Rao and M.V. Venkatesan, for the Appellant; M.S. Venkatarama Iyer, for the Respondent

Final Decision : Allowed

Judgement

Chandra Reddi, J.—The appellants in this case are defendants 2 to 13, who are the transferees from the registered pattadar, defendant 1

and who are aggrieved with the judgment and decree of the Subordinate Judge of Chingleput, who reversed the decision of the District Munsif of

Poonamallee. The material facts that led up to the present litigation may be briefly stated. Plaintiff 1 who was a receiver appointed in O. S. No.

440 of 1917 on the file of this Court and who got himself registered as a landholder brought the holding of defendant 1 to sale for arrears of rent

accrued due for Fasli 1348 u/s 112, Estates Land Act, and he himself purchased the property in auction for Rs. 177 and took symbolical

possession thereof, Plaintiff 2 is a person claiming under plaintiff 1 as a lessee of the suit holding. Defendant 1 is the widow of the vendor of the

holding to the two branches of the defendants' families, defendants 2 and 6 being the managers of the respective families. As defendants 2 to 13

who were in possession of the property resisted the attempts of the plaintiffs to get possession thereof, the plaintiffs were obliged to file the suit, O.

S. No. 307 of 1942.

2. The suit was contested inter alia on the ground that as defendant 1 who was the registered holder was not served with notice u/s 112, Madras

Estates Land Act the sale was a nullity, and that plaintiff 1 acquired no valid title under it. The trial Court among other things found that the sale was

invalid as it was not proved that defendant 1, who was the registered pattadar of the holding was personally served with notice u/s 112.

3. The plaintiffs took up the matter in appeal to the Court of the Subordinate Judge of Chingleput who set aside the decision of the trial Court and

gave a decree to the plaintiffs finding that the evidence on record impliedly proved that there was a valid service of notice of sale of defendant 1

and two others. Against this decree defendants 2 to 18 have preferred the present second appeal.

4. The only question that falls to be determined in this appeal is whether the sale held was invalid for want of notice as required by the provisions of

the Madras Estates Land Act. Provision for service of notice upon the defaulter is contained in Section 112 of the Act. The section requires that

four copies of the notice together with the fee for service thereof shall be sent to the Collector who shall cause service to be effected upon the

defaulter in the manner provided in Sub-section (2) of Section 78 for the service of a written demand. A copy of the notice shall also be sent by

post to the defaulter." Sub-section (2) of Section 78 provides that:

The demand and account shall be dated and signed by the distrainer and shall within one year from the date on which the arrear became due be

served upon the defaulter by delivering a copy to him or to some adult male member of his family at his usual place of abode, provided that it is in

the neighbourhood of the land to which the distress refers or to his authorised agent, or, when such service cannot be effected, by affixing a copy

of the notice on some conspicuous part of the land to which it refers.

It has been laid down in a number of decisions that want of notice of sale u/s 112 of the Act would render the sale a nullity, and that the statutory

requirements as to notice cannot be said to have been complied with, when neither personal service was effected nor attempted to be made upon

the defaulting ryot before service by affixture was made. In Kalepalli Rajitagiripathi Vs. Jannavala Pedakotayya and Others, , a Bench of this Court

held that notice by affixture without any attempt at personal service on the defaulting ryot was on the same footing as no notice at all, the difference

between the two being only one of degree, and that it rendered the sale a nullity. The reasons for holding such a sale a nullity are succinctly put by

Curgenven J. at p. 677 of the report in these terms:

. . . . personal service alone affords a guarantee that the defaulter is apprised of the projected sale, and not until that course has been found

impracticable may the less effectual method of service be adopted. The principle involved is of course that no order should be made against a

person to his detriment unless and until he has been afforded an opportunity to appear and show cause against it. It is a principle which is violated

by the failure to issue notice, and it seems to as that it is also violated, though perhaps not so flagrantly, by the omission to follow a direction of law

which is devised to secure that it is observed. The difference between the two cases is one of degree rather than of kind. In the one case no steps

are taken to inform the defaulter, in the other the steps taken are so defective, that in a certain number of cases he will not be informed.

5. In Vattipalli Rameswaramayya Vs. Raja Panuganti Parthasarathy Rayanimvaru, Zamindar of Kalahasti and Others, , it was laid down by

Wadsworth J. that in order to justify a service by affixture it must be established that reasonable diligence was shown in trying to effect a personal

service. The learned Judge also observed therein that mere temporary absence of a person to be served did not justify service by affixture.

6. Now, I must consider whether in this case there is any evidence on record which justifies the conclusion that defendant 1, the registered

pattadar, was either personally served with notice, or that due diligence was shown in trying to effect a personal notice on her, and failing in that

attempt service was made by affixture. The only evidence bearing on this question is that of P. W. 1 and D. W. 1 and Ex. P-4, an intimation u/s

113 by the Revenue Divisional Officer, Trivellore to plaintiff 1 about the dates of service of notice u/s 112 in regard to pattadars of several holdings

in the village. Exhibit P-4 would only show the date of service of the notice but sot the manner of service. It does not show that either defendant 1

was personally served, or service by affixture was made after the attempt to serve her personally proved futile. (After considering the evidence of

P. W. 1 and D. w. 1 his Lordship concluded). In these circumstances the finding of the lower appellate Court that defendant 1 was personally

served with notice u/s 112 which is not based on any evidence cannot be sustained. For this reason it must be held that the rent sale under which

plaintiff 1 claimed title was a nullity, as the procedure prescribed by the statute for service of notice was not followed, and that he did not acquire

any valid title to the suit property.

7. In the result, I allow the second appeal, set aside the decree of the lower appellate Court and restore the judgment and decree of the trial Court.

The respondents will pay the costs of the appellants here and in the Courts below.

8. Leave refused.