
(1924) 03 MAD CK 0002
In the Madras High Court

Pachalla Doraiswami Aiyangar and Others APPELLANT
Vs
Sri Mahant Prayaga Dosjee Varu RESPONDENT

Date of Decision : 27-03-1924

Acts Referred:

Madras Estates Land Act, 1908 — Section 125

Citation : AIR 1924 Mad 918

Hon'ble Judges : Wallace, J

Bench : Division Bench

Judgement

Wallace, J.—The facts necessary for the disposal of this appeal are as follows:
One Sallappa Asari was an occupancy tenant in the 1st

defendant's estate. On 4th May, 1901, he mortgaged the five items of the plaintiff property.

2. The mortgagee sued to recover his money and obtained a decree for sale of the mortgaged property on 4th June, 1912. It became final on 9th

January, 1913, and the property was sold in execution of the decree on 15th November, 1915. The plaintiff purchased all the five items on 7th

June, 1916 from the auction-purchaser and got delivery through Court on 31st January, 1917. In the meantime on 22nd March, 1913, items 3 and

4 of the plaintiff property were sold by the landlord, the first defendant for the arrears of rent due on the holding by Sallappa Asari and the first

defendant alleges that he bought in these properties for eight annas and got delivery of them on 25th October, 1915, and that he sold them again to

defendant 2 to 8. The question at issue was whether the plaintiff's purchase on the footing of the mortgage decree prevails against the first

defendant's purchase in the rent sale. The lower appellate Court has held that the plaintiff's title did not prevail against the 1st defendant's rent sale

title, and therefore dismissed the suit and the plaintiff appeals.

3. I cannot see why the plaintiff was not given at least a decree for items 1, 2 and 5. The first defendant puts forward not claim be items 1 and 2

nor do any of the other defendants; and as regards item 5, although the first defendant claims that he brought that also in the rent sale, his sale

certificates, Exhibits I and II, show that that was not so.

4. As regards item 3, a garden with an indigo vat and item 4 nunja, it is not quite easy to say definitely what field numbers they correspond to, but,

so far as I can ascertain from the documents filed in this case, item 4 seems to correspond to nunja Nos. 200 and 201, while the garden in item 3

appears to be described under Nos. 240 and 244 with an area of 10 acres and 3 cents and the vat appears under Nos. 240 and 341 with an area

of 1 acre and 8 cents.

5. u/s 125 of the Madras Estates Land Ant, under a sale for arrear of rent, the purchaser takes subject to any encumbrance created before the

passing of the Act. The encumbrance in this case was created in 1901. Prima facie then the rent sale is subject to it; but the contesting defendants

contend that the mortgage was extinguished when the decree was passed and that, as first defendant was not a party to the mortgage suit, the

decree in it will not bind him. The lower appellate Court has accepted both these contentions, but it has wholly misunderstood one crucial fact in

the case, and that is that the first defendant never put an end, under cover of his rent sale, to the occupancy right of the defaulter. The rent sale was

on 22nd March, 1913. Under Exhibit D(1), dated 15th February, 1915 the first defendant had issue a patta for fasli 1324 to the defaulter of or

Nos. 200, 201 and 240 (1 acre and 8 cents), and 240 (10 acres and 8 cent), i.e., for the whole of items 3 and 4; so that, for this fash, the first

defendant issued pattas to the defaulter for all that he ostensibly brought in under his rent sale. The patta for the previous fasli 1323 is not filed, but

there is no presumption that it will be anything different from putta for fasli 1324. Prior to Exhibit D, bout subsequent to the rent sale, is a notice

Exhibit D, dated 23rd June, 1914, by first defendant to the defaulter informing him that arrears are due on the indigo vat and that, unless that were

paid up, the holding would be sold. This was the holdings already sold for arrears of rent on 22nd March, 1913, and alleged to have been brought

in. The sale was apparently a sham.

6. First defendant allege a sort of delivery through Court on 25th October, 1915 of the items sold at rent sale on 22nd March, 1913. There is no

documentary evidence of this delivery and that it was a sham is clear from the facts that the sale itself appears to have been a sham and that on 2nd

May, 1916, first defendant again issued patta for fasli 1326 to the defaulter for Nos. 240 and 241, area 1 acre, 8 cents, the indigo vat, and

followed it up by a similar patta Exhibit D-3 on 25th May, 1918, for fasli 1327. On 28th January, 1917, and 30th December, 1917, he accepted

rent from plaintiff for the indigo vat on behalf of the registered pattadar, Sellappa Asari, i.e., the defaulter (see Exhibits D-4 and D 5). On even

date with Exhibit D-3 is Exhibit VI a patta for fasli 1327 to 2nd defendant for items 3 (garden) and 4. This is the first issue of a patta to any one

else but the defaulter.

7. There is absolutely no evidence that the occupancy tenancy of the defaulter had ever been terminated by any real and proper legal proceedings

on or before 15th November, 1915, the date of the sale in execution of the mortgage decree. It was in the holding and possession of the defaulter

and was his property on the date of that sale. This is the property which has passed to the plaintiff of which he got delivery on 31st January, 1917,

and of which first defendant never got delivery. First defendant therefore could not convey it to any one else. He never enforced his rights under

the alleged rent sale and never terminated the defaulter's occupancy right, which in consequence of his action, passed to plaintiff, beyond the reach

of 1st defendant, long before the date of the patta to 2nd defendant. It is impossible therefore to see how the plaintiff's right on the footing of the

Court-sale could possibly be interfered with by the first defendant's right under his rent sale. The ruling in Vemanna Venkatachalla Naidu v.

Ethirajammal (1921) 39 M.L.J. 597 relied on by the Subordinate Judge has no application to this case since there no patta was issued after the

sale for arrears of rent and the occupancy right of the tenant had obviously been terminated by the rent sale.

8. I must therefore (sic) for the decree of the lower appellate Court (sic) restore that of the District Munsiff (sic) costs to the plaintiff from

defendants 1 and 2 here and in the appellate Court.

9. Second Appeal No. 1131 of 1921 follows the decision in this case and the lower appellate Court's decree must be reversed and the suit dismissed with cost throughout.