
(1911) 08 MAD CK 0006
In the Madras High Court

Pitty Thayagaraya Chettiar

APPELLANT

Vs

Sivapada Mudally and Others

RESPONDENT

Date of Decision : 22-08-1911

Acts Referred:

Madras Rent Recovery Act, 1865 — Section 18

Citation : (1911) 21 MLJ 1008

Judgement

1. In the suit out of which this appeal arises the plaintiff, as purchaser of certain lands at a rent sale under Madras Act VIII of 1865, sued to get

possession of the said lands with mesne profits from his daughters who had remained in occupation. The District Munsif dismissed the suit on the

ground that the sale having been held two days after the advertised date was illegal and invalid. The District Judge on appeal took the same view.

2. The case quoted by the District Judge Venkata Chellapati Iyer v. Robert Fischer (1007) 17 M.L.J. 297, as well as the case Ramanasari v.

Muthusamt Naick ILR (1906) M. 248 are good authorities for holding that in a suit of this description the defendant may plead illegality of the sale

as a defence even although he may have taken no previous steps to get the sale set aside and that, if the sale is found to be invalid, the suit must be

dismissed. But it certainly does not follow that every irregularity in the sale proceedings will have the same effect, vide Subramania Aiyar v.

Rangappa Kalakka Thola Udayar ILR (1900) M. 307. In the first of the cases quoted above the sale was held in pursuance of an illegal demand,

in the second a statutory provision of law in Section 18 of the Madras Rent Recovery Act had been violated. The present case is very different.

The sale irregularity on which the District Munsif proceeded is the adjournment of the sale from the advertised date, 14th May 1900, to the 15th,

and again to the 16th on which date the plaint properties were sold. These adjournments were due to the fact that it was not found possible to complete the sale of all the items notified for sale on the first or even the second day. Whether the selling officer was empowered to adjourn the sale under these circumstances is open to argument and is a point 011 which no express authority has been quoted. But in any case it is not an infringement of any provision of law; and is, in our opinion, almost, merely an irregularity which might or might not justify setting aside the sale. In the absence of any provision on the point in the Madras Rent Recovery Act, we may follow the analogy of Section 311 of the old Civil Procedure Code, Act XIV of 1882, which was in force at the time of the sale, and hold that it would only invalidate the sale, if it were shown to have caused substantial injury to the defaulter in the shape of a lower auction price.

3. There are two other alleged irregularities to which our attention is drawn. The first of these, dwelt on by the District Judge, is the fact that the items were not put up for sale in the order in which they stand in the sale list; while the second, to which our attention is drawn for the first time in this Court by the respondent's vakil, is that the sale notice, Exhibit P, includes the properties of 29 different defaulters. He argues that there should have been a separate sale notice for each. No authority is quoted for the last mentioned position and the former irregularity stands on the same footing as the one we have already dealt with. It has not been found that the sale price fetched by the suit properties was inadequate, although an issue (No. 5) was framed, covering the point. The District Munsif has recorded no distinct finding but says that the value of the properties was problematical, by which he presumably meant that he found it impossible to say whether the price was or was not fair. The District Judge has recorded no finding on the point. We do not propose to call for one, as in our opinion no issue should ever have been framed on the point. We say this for the simple reason that no allegation of limitation of sale price or other substantial injury has ever been made by the defendants. Their written statement makes no reference whatever to any irregularity in the conduct of the sale, much less to any substantial injury consequent thereon; and from para 4 of the District Munsif's judgment, it appears that the irregularity of the postponement of the sale was discovered by the District Munsif

himself when he began to write his judgment. It was in consequence of this discovery that he framed a fresh issue which ran thus:

V. Whether the plaint lands were sold in the rent sale for a fair price? If not, whether the sale is invalid or illegal?

5. Whether the irregularity discovered amounted to an illegality which would necessarily invalidate the sale was a question which it was open to him

to consider although the point had not been raised; but in the absence of any allegation of consequent substantial injury it should have been

presumed that there was no such injury and the framing of an issue on the point was unnecessary and improper.

6. The dismissal of the suit on the 5th issue was wrong. The decrees of the lower courts must be set aside and the suit remanded to the District

Munsif's court for disposal on its merits. The costs will be the costs in the cause.