

(1940) 10 MAD CK 0052
In the Madras High Court

Poliseti Venkataratnam

APPELLANT

Vs

Dhulipudi Surya Rao and Others

RESPONDENT

Date of Decision : 04-10-1940

Acts Referred:

Citation : AIR 1941 Mad 500 : (1941) 53 LW 86 : (1941) 1 MLJ 156

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These Civil Revision Petitions raise the question whether Section 23 of the Madras Act IV of 1938 applies to sales in execution of decrees for arrears of rent under the Madras Estates Land Act.

2. The decree in each of these cases was passed in either 1934 or 1935. The sales were all held on the same date, 10th December, 1937. On 20th January, 1938, the tenants applied for challans with a view to payment of the decreed amounts but, instead of paying, on the following day they filed applications purporting to be under Order 21, Rule 90, Civil Procedure Code, and Section 192 of the Estates Land Act, praying that the sales may be set aside on the ground of irregularity etc. Act IV of 1938 came into force in March, 1938 and on 9th April, 1938, when the sale proceeds were lying in Court and no sale certificate had been issued, the judgment-debtors withdrew their application under Order 21, Rule 90, Civil Procedure Code, and instead filed applications under Sections 15 and 23 of Act IV of 1938.

3. The main argument in these petitions is that Section 23 has no application to sales in execution of decrees for rent under the Madras Estates Land Act. In terms, the section appears to apply to sales in execution of any decree whereby immovable property in which an agriculturist has an interest has been sold on or after 1st October, 1937 and the application may be made by any judgment-debtor claiming to be an agriculturist entitled to the benefits of the Act and if the application is made within 90 days of the commencement of the Act, the Court is obliged, if satisfied, that the applicant is an agriculturist entitled to the benefits

of the Act, to set aside the sale after giving notice to the persons interested and hearing them. The argument that this section, which appears to embrace all decrees, excluded decrees under the Madras Estates Land Act, is largely rested on the fact that though the section has a non obstante provision regarding what is contained in the Code of Civil Procedure, there is no similar provision regarding what is contained in the Madras Estates Land Act. It is also suggested that the words, "notwithstanding that the sale has been confirmed" seem to contemplate a sale under the CPC and not a sale under the Madras Estates Land Act, with regard to which Section 124 does not require any confirmation order but provides merely for the grant of a certificate of sale if no application has been made to set aside the sale u/s 131. It is also pointed out that Section 23 contains no provision regarding the setting aside of sales under the summary provisions contained " in Sections 112 to 118 of the Estates Land Act and it is contended that it is not likely that the Legislature would have given relief in the case of one class of sales under the Act if they were not giving relief under the other class. A further contention was based on the terms of Section 22 which deals with sales of movable property, but makes no provision for dealing with such sales if the judgment-debtor is entitled to the privileges u/s 15 of the Act.

4. Now, there are, to our mind, many arguments which can be advanced against these contentions which Mr. Narasa Raju has put forward. In the first place, Section 15 deals with arrears of rent not only under the Madras Estates Land Act which prescribes a special machinery for execution, but also under the Malabar Tenancy Act with reference to which the ordinary procedure applies and the ordinary Civil Courts have jurisdiction. It cannot be contended that the non-mention of the Madras Estates Land Act in Section 23 is any indication that Section 23 would have no application to sales for arrears of rent in the ordinary Civil Courts under the procedure laid down by the Civil Procedure Code. Moreover even a decree for rent under the Madras Estates Land Act. may result in a sale by the ordinary Civil Courts under the CPC if that decree is transferred to the Civil Courts for execution. To accept the argument which has been advanced before us on the strength of the absence of any non obstante clause with reference to the Estates Land Act, would lead to the anomalous position that some sales in execution of decrees under the Estates Land Act would come within the purview of Section 23 of Act IV of 1938 and others would not; while sales in execution of decrees for rent under the Malabar Tenancy Act would be liable to be set aside u/s 23 though most sales in execution of decrees for rent under the Estates Land Act would escape. The argument based on Section 22 can have little force having regard to the position of sales under the Malabar Tenancy Act. No doubt, the procedure for scaling down rent has this difference from the procedure for scaling down an ordinary debt, in that it is conditional on a deposit by the person liable to pay. But the fact that the extent to which the decree will have to be scaled down may not be capable of being determined at the time when the sale is to be set aside, is not, in our opinion, a reason for refusing to apply Section 23 if in terms that section applies.

5. Our attention has been drawn to the difference between the wording of Section 23 and that of Section 19. Section 19 speaks of a decree for the repayment of a debt and by the definition of "debt" this would not include a decree for the payment of rent. Section 23, however, has, the very wide term "any decree" and it would require very strong indications of the intention of the Legislature to justify our interpreting the words "any decree" to mean "any decree excluding a decree under the Madras Estates Land Act."

6. It has also been contended that Section 23 is only available to a judgment-debtor who is found to be entitled to the benefits of the Act and it is argued that in the case of a person liable to pay rent, the question whether he is entitled to the benefits of the Act will depend on (1) whether there is rent outstanding on the date of the commencement of the Act and, (2) whether he has paid in respect of the holding the rent due for fasli 1347 on or before the 30th September, 1938. It is suggested that because in these cases sales had been held and the purchase price was in deposit with the Collector, there was no "rent" outstanding on the date of the commencement of the Act. We are unable to accept this contention. The mere holding of the sale will not, in our opinion, wipe off the arrears of rent. Those arrears will remain outstanding until the proceeds of the sale are paid to the landholder. Nor can it be contended that the judgment-debtors were not entitled to the benefit of Section 15 because on the date of their applications, they may not have paid the rent due for fasli 1347. This payment has by the terms of the second proviso to Section 15 to be made before the 30th September, 1938 and orders were passed on the present applications on 19th May, 1938. The question whether they will be entitled to the benefit of Section 15 when the Court proceeds to ascertain the amount due from them after setting aside the sale, will depend on whether they have or have not made the required deposit before the statutory date. On that point we have no information.

7. It seems to us clear that quite apart from the question whether the petitioners were entitled to the benefits of the Act in respect of Section 15, they were clearly entitled to the benefits of the Act in respect of the decree for interest on costs. No doubt, the definition of "rent" includes rent covered by a decree, but the terms of Section 16 make it quite clear that costs awarded in a decree for rent are something quite apart from the rent. We have already held in Palani Goundan Vs. Muthuswami Goundan alias Avanashi Goundan, that a decree for costs is liable to be scaled down under Sections 8 and 9 as regards interest. It follows that even apart from the claim of the petitioners to be entitled to the benefits of the Act u/s 15 as regards rent, they were entitled to the benefits of the Act under Sections 8 and 9 as regards interest on costs. The Court below therefore had no option but to set aside the sales on application.

8. In the result, therefore, these three petitions are dismissed with costs of the judgment-debtor-respondent. (One set).

9. Pleader's fee fixed at Rs. 69--Rs. 23 in each case.