

(1942) 01 MAD CK 0035
In the Madras High Court

P.V. Sreekanta Goundan

APPELLANT

Vs

M. Javani alias Vella Amma and Another

RESPONDENT

Date of Decision : 08-01-1942

Acts Referred:

Citation : AIR 1942 Mad 406 : (1942) 55 LW 159 : (1942) 1 MLJ 386

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This is an appeal by a judgment-debtor in regard to certain property which originally admittedly belonged to him and was delivered in execution of a decree against him to the respondent. After the sale, the 2nd respondent obtained delivery of 19.71 acres of land. According to the appellant, the property actually sold measured only 14.60 acres and therefore he claimed re-delivery of the excess 5.11 acres. The learned Additional Subordinate Judge, Calicut dismissed the appellant's application for se-delivery of this property and the appellant has accordingly appealed.

2. A preliminary objection was taken on behalf of the 2nd respondent that no appeal lies. The argument was that a matter of this kind which is in dispute between a judgment-debtor and a stranger auction-purchaser does not fall within Section 47 and therefore the decision of such a matter is one not open to appeal. That such a dispute does not fall within Section 47 is said to follow from the recent Full Bench decision of this Court reported in Thondam Annamalai Mudali Vs. Tiruttani Ramasami Mudali and Others, We do not think however, that even if that be so, it necessarily follows that the appellant here has no right of appeal. His right of appeal is governed by Section 96 and the definition of "decree" in Section 2 of the Civil Procedure Code,. In Section 2 it is stated in the definition of a "decree", that a decree shall be deemed to include the determination of any question within Section 47. In the present case it is beyond dispute that the learned Subordinate Judge himself took up this question as one u/s 47 and decided it under the impression that he was dealing with it under that section. It

seems to us clear that his decision is the determination of any question within Section 47 within the meaning of " : "decree", and as no authority to the contrary has been cited before us, we have over-ruled the preliminary objection. "

3. On the merits, however, we think that the appellant must fail. This is a case of a faulty description of property in a sale certificate. The property is described under its own name and as having been old survey No. 266 and as being now re-survey No. 455133. The description goes on to state that it contains 500 pepper vines, 500 coffee plants, 2,000 posts and miscellaneous trees and nine bins made of timber, and then the size of the bins is specified. In the next column it is shown that the extent of the property is 14.60 acres and the assessment is given as Rs. 21-14-0, which is the correct assessment payable upon survey No. 455133. There does not appear to have been any investigation as to the exact number of pepper vines or coffee plants or posts or miscellaneous trees contained upon the 14.60 acres about which there is no dispute, or the 5 and odd acres which forms the subject-matter of this appeal. But it is undeniable that the bins to which reference is made in the sale certificate do not exist upon 14.60 acres but only in the disputed portion. The learned Subordinate Judge holds that the most important feature of this description is the list of the "contents" of the land sold and consequently that there must have been a mistake in the survey number, and following upon it, in the acreage and assessment. That such a mistake was possible is clear from the fact that the old survey No. 266 does not precisely correspond with the new survey No. 455133 but includes also both the disputed portion and a considerable further extent of land. "We have been asked in this appeal to attach the greatest importance to the mention of the survey number and the acreage as being particulars about which there could be no possible mistake. But it has not been explained to us why in that case it was necessary for the Court to include in the sale certificate the various other particulars about pepper vines, coffee plants and bins, etc. It cannot be that these particulars were included for no purpose, and the learned Subordinate Judge has held that there was a definite intention of the Court and the parties that the bins for instance should themselves be separately sold and they were separately sold. It has been suggested to us for the appellant that the statement of the lower Court may be mistaken, and that it would be advisable for this Court to send for the original sale proclamation in order to determine what in fact was proclaimed for sale and therefore, sold. We are not prepared to accede to this proposal for, in our opinion, it was the clear duty of the appellant himself who had applied to the Court for re-delivery, to have called the Court's attention to its own records if by so doing he could have proved his case. It is, we think, almost inevitable that the description of the property contained in the sale certificate is a mere copy from the description which must have been contained in the proclamation of sale. "We think in conclusion that upon the facts of this case, the learned Subordinate Judge was justified in attaching more importance to the details of what was to be found upon the land than to the reference to the

survey number or acreage of the land. That being so, we see no reason to interfere with his order.

4. This appeal must fail and is dismissed with costs.