(1947) 03 MAD CK 0018

In the Madras High Court

R.M.K.M.C. Muthukaruppan Chettiar APPELLANT

Vs

Sinnappa Goundan and Others RESPONDENT

Date of Decision : 28-03-1947

Acts Referred:
Transfer of Property Act, 1882 — Section 69

Citation : AIR 1948 Mad 130 : (1947) 60 LW 518 : (1947) 2 MLJ 157

Hon'ble Judges : Chandrasekhara Aiyar, J

Bench : Division Bench

Judgement

Chandrasekhara Aiyar, J.—The plaintiff who in the appellant in this second appeal sued to recover possession of three survey numbers

1126, 1131 and 1152/B alleging that he had purchased them on 7th April, 1930, at a sale in execution of a simple money decree in O.S. No. 363

of 1929 which he had obtained against defendants 1 and 2 and that though he got possession there was a subsequent trespass by the defendants.

Defendants 4 to 6 and 10 who are impleaded as purchasers contested the suit and pleaded that for arrears of loan due to Government the

properties were brought to sale and the fourth defendant purchased Nos. 1126 and 1131 and got possession. Subsequently he made alienations.

2. The claim against S. No. 1127 was given up by the plaintiff. The District Munsiff gave the plaintiff a decree for possession of S. Nos. 1131 and

1152/B. As regards 1126, he held that the plaintiff''s right had become extinguished by reason of the sale held under the Land Improvements

Loans Act.. On appeal by the defendants 4 to 6 and 22 to the Subordinate Judge of Coimbatore, he had held that S. No. 1131 was subject to a

charge in favour of Government and that as it was sold in discharge of the encumbrance, the revenue sale conferred a better title on the fourth defendant. He further held that the fourth defendant was. entitled to re-imbursement to the extent of Rs. 575 under Ex. D-1, the sale certificate

issued in favour of the fourth defendant and Rs. 2,025 under Ex. D-10. The decree of the District Munsiff was modified by refusing the plaintiff any

relief in respect of S. No. 1131. The decree with reference to S. No. 1152/B was allowed to stand because the 22nd defendant acquired title to it

only by private sale subsequent to the Court auction sale. The Subordinate Judge points out therefore that the real point in controversy between the

parties centered round 1131. He dismissed the plaintiff''s suit as regards this plot as he took the view that the sale by the revenue officer to recover

the loan advanced under Ex. D-2 dated 28th January, 1924, under the Agriculturists'' Loans Act conferred on the fourth defendant a better title

than the one acquired by the plaintiff by reason of the -purchase in the Court-sale in execution of the money decree.

3. For the plaintiff-appellant two points have been raised : firstly, that as the Agriculturists'' Loans Act differs from the/Revenue Recovery Act and,

the Land Improvements Loans Act in that it does not confer by virtue of its own provisions any charge in favour of the Government, a sale held

under the Act has not the effect of extinguishing prior interests: created in respect of the property and that consequently the plaintiff who purchased

the property earlier than the fourth defendant who purchased it only on 2nd October, 1932, at the sale held by the Revenue Officer has a better

title than the fourth defendant. Secondly, that he cannot in this suit which he has filed to recover possession be asked to redeem the fourth

defendant and be compelled to reimburse him the moneys which he has had to pay for his purchase.

4. Two answers have been attempted on the side of the respondent. One is-that Ex. D-2 the agreement under which the loan was granted to the

first defendant by the Government for agricultural purposes under the Agriculturists'' Loans Act under which the survey number was offered as

collateral security for the due repayment of the loan is an agreement under which a power of sale has been conferred upon the Secretary of State

for India in Council within the meaning of Section 69 of the Transfer of Property Act and that consequently the title of the purchaser under the sale

is absolutely unimpeachable. The second position taken up is that as the procedure indicated in the Agriculturists'' Loans Act was followed and the property was purchased at a sale held under the Act in satisfaction of a charge of the year 1924 without collusion or any defect in the steps taken,

the fourth defendant acquires a good title even against the plaintiff.

5. I am of opinion that in the circumstances set out above the plaintiff-appellant''s title has to prevail. Section 69 of the Act confers a power of

private sale only in cases where the mortgagee is the Secretary of State for India in Council, i.e., the contract must be for and on behalf of the

Secretary of State for India in Council. Every contract made by or on behalf of a Local Government or the Government of India cannot be

deemed to be such a contract. Contracts by or with the Secretary of State for India in Council are expressly dealt with under Sections 28 and 32

of the Government of India Act of 1919 and they provide how they should be made, in respect of what matters and by whom. Sub-clause (3) of

Section 69 as it originally stood, which is what would be applicable to this case, cannot be read as meaning that wherever there is a contract

entered into with the Government it must be deemed to be a contract entered into with the Secretary of State for India in Council. Processual law

prescribes the procedure for suits by or against the Secretary of State for India in Council and it is no doubt true that when suits have to be filed

against the Government it may be necessary to file them as suits against the Secretary of State for India in Council; but this is quite different from

saying that every contract with the Government is a contract with the Secretary of State for India in Council. This distinction is pointed out in

Municipal Corporation of Bombay v. Secretary of State for India I.L.R.(1932) 58 Bom. 660 by Mirza, J. Section 69 does not apply and therefore

Sub-clause (3) conferring on the purchaser an unimpeachable title cannot be invoked by the respondent.

6. If Ex. D-2 cannot be read as a contract under which a private power of sale is legally conferred on the charge-holder it is open to doubt

whether the procedure-contemplated by the Agriculturists'' Loans Act authorising the Government to bring the property to sale straightaway

without the intervention of a suit will not amount to a clog on the equity of redemption and will not therefore be invalid. But it is unnecessary to

pursue this point further in the view taken by me that Section 69 has no application at all.

7. It has been held in Lachminarain Singh v. Nand Kishorelal Das I.L.R.(1902) Cal. 537 and Korlapati Thammayya alias Bulli Abbayi of

Korlapativaripalam Vs. Medida Ramanna and Others, that in a case of this kind of a takkavi loan or a loan granted for purpose of agriculture

where a statute does not by itself create a charge, a sale of the property conveys to the purchaser nothing more than a right, title and interest of the

mortgagor. The purchaser does not become, and cannot be treated as an assignee of the charge or the mortgage. This being so, the position of the

fourth defendant under his purchase made on 2nd October, 1932, at the sale held by the revenue officer under the Agriculturists'' Loans Act is

nothing better than that of a private alienee from the mortgagor who has discharged an encumbrance subsisting on the property. The plaintiff-

appellant purchased the property earlier and his right to possession is therefore paramount to the right of the fourth defendant who can at best only

insist on standing in the shoes of the Government so far as the loan for the recovery of which the property was sold is concerned. He may have a

right to insist on payment being made to him of the amount due under the security created over the property. But he cannot certainly dispossess the

plaintiff or resist his action for possession. The second appeal is allowed, the decree of the lower appellate Court is set aside and the plaintiff will

have a decree for recovery of S. No. 1131 also. The contesting respondents will pay the appellant''s costs here and in the lower Court.

8. No leave.

