

(1927) 03 MAD CK 0051
In the Madras High Court

S. N. Thiruvikrama Ayyar and Another	Vs	APPELLANT
Vyapuri Naicken and Another		RESPONDENT

Date of Decision : 08-03-1927

Acts Referred:

Citation : AIR 1927 Mad 1028

Hon'ble Judges : Srinivasa Ayyangar, J;Srinivasa Aiyanger, J

Bench : Division Bench

Judgement

Srinivasa Ayyangar, J.—There has been a great deal of learned discussion in the course of the argument of this appeal on both sides, but it has ultimately turned out that the case has to be disposed of not on any consideration of any difficult questions of law or construction of statute but merely on a construction of the document itself bearing on the question. Both the lower Courts have held that the plaintiff who was suing for redemption was not barred by reason of Art. 134, Schedule 2, Limitation, Act. The argument for the defendants-appellants before me was that both the lower Courts erred in holding that that article did not apply. In the view that I have taken of this case it seems to me that at the present stage it is unnecessary to discuss any of the various decisions that have been cited at the Bar. I may, however, briefly refer only to one point. The corresponding article in the Limitation Act of 1871 contained the expression ""good faith"" and the corresponding article in the Limitation Act of 1859 contained the words ""bona fide."" Both these articles therefore, were held applicable only to cases where the purchase or transfer as the case may be was either bona fide or in good faith. But in the Limitation Act of 1877, as in the Act of 1908, these expressions, ""bona fide"" and ""good

faith"" have been deliberately deleted from the article. That deliberate amendment of the Act must be taken really to signify the intention of the legislature to the effect that the limitation of 12 years prescribed by the third column of that article should apply not only to cases of purchase and transfer bona fide or in good faith, but also to cases where there are transfers of property either by the trustee or by the mortgagee, whether they are bona fide or not, and whether they are in good faith or not, Many of the decisions in recent years especially in this Court, have referred to the purchaser or transferee honestly bargaining for and believing himself to be purchasing an absolute interest in the property.

2. The observations of learned Judges in some of these cases would almost seem to show that they have allowed to come in by the back door the questions of bona fides and good faith which the legislature deliberately removed from the statute. However, one thing, at least is perfectly clear, that before this article can be held applicable to a case there must be a real transfer and that the transfer must be an absolute transfer of the property itself and not a mere assignment of the mortgage. It is possible that the words referring to the honesty, the state of mind or belief of the transferee, may have reference to the inconceivability of the transfer being of the absolute interest if, as a matter of fact, both the transferrer and the transferee knew at the time of the transaction that the transferrer could only sell a limited interest and that, therefore, the transferee could acquire only such limited interest as the result of the transaction. If, as pointed out by Mr. T. M. Krishnaswami Ayyar, the learned vakil for the appellants, therefore, in a case where the transferee in spite of the fact that he knew or had reason to believe that the transferrer was only a mortgagee still stipulated for an absolute transfer of the land and obtained it, I do not think the mere fact that the transferee knew or had reason to believe that the transferrer was merely a mortgagee or a limited owner could really affect the question of the applicability of this article. However, as I have already said, I am glad to think that that question does not arise for decision now in this case before me because, though, at first I was inclined to consider that the deed of transfer in this case, namely Ex. F was a deed of absolute transfer of the land itself, I have now, on a consideration of the language employed in the deed, come to the conclusion that the decision with regard to it by the lower Courts was right. It may be observed in this place

that Art. 134, Limitation Act, cannot possibly apply to a transfer in invitum or by operation of law or in execution, because the article specifically speaks of the transfer made afterwards being by the trustee or mortgagee for valuable consideration. It seems to me impossible to conceive how a sale in execution of a decree or in invitum can be regarded as a sale by the trustee or the mortgagee, if that be so, Ex. D, the sale certificate in this case, cannot be regarded, and it is not contended even by the learned vakil for the appellant, that Ex. D represents the transfer which will have the effect of attracting Art. 134 to the present case. What is really relied upon as the transfer which makes the article applicable is the sale under Ex. E by the person who was the certified purchaser under Ex. D. No doubt in Ex. E the document speaks of its being a sale-deed in respect of land and the property is also referred to as land. But it is very significant that in the operative portion of the deed the expression is ""Nan alathil eduthathai"" or in other words that which I purchased in auction that is what the vendor or the transferrer purports to transfer under Ex. R. It might also be observed that Ex. E is not in the ordinary form of a sale-deed. There are not there such words as are generally found in the sale-deeds in the vernacular which are in common form such as that the property should be enjoyed by the purchaser from son to grandson and so on and also that it should be enjoyed without any let or hindrance so long as the sun and moon shall last, and words to similar effect. If Ex. E, in its operative portion, expressly refers to what is being sold as being that which was purchased by the transferrer in Court auction under Ex. D, it follows that what was being put for sale as the result of the mortgage decree having been merely the mortgagee's interest which was the subject of the sale, that alone was purchased; and the conclusion is that it was only the mortgagee's interest that is also the subject of the sale under Ex. R. Mr. T. M. Krishnaswamy Ayyar frankly admitted that, if that was the conclusion I should arrive at on a construction of Ex. E, there was no question whatever of the applicability of Art. 134 of the Limitation Act. As I have, therefore, come to the conclusion that there was in this case by the mortgagee no absolute transfer of the land even purported to have been made, no question arises as to the applicability of Art. 134, and it follows that the decision of the lower appellate Court was right. The second appeal fails and is dismissed with costs.