
(1955) 08 MAD CK 0031
In the Madras High Court

S. Ranga Rajendran and Others

APPELLANT

Vs

S.K.A.R.S.M. Ramanatham Chettiar

RESPONDENT

Date of Decision : 23-08-1955

Acts Referred:

Citation : (1955) 68 LW 969 : (1956) 1 MLJ 173

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—This is a Revision Petition filed by the judgment-debtors in E.P. No. 83, of 1955 in O.S.No.138 of 1950 on the file of the Sub-Court, Madurai, against an order passed for proclamation of sale. The circumstances under which the present revision petition has been filed are these: The preliminary decree in the suit was passed on 31st October, 1950. The final decree was passed on 27th August, 1951. Subsequently on 27th November, 1951, E.P. No. 446 of 1951 was filed and after notice to the present petitioners, judgment-debtors, the terms of proclamation were settled. After the settlement of the terms of proclamation the Madras Indebted Agriculturists (Temporary Relief) Act V of 1954 came into force in consequence of which there was stay of further proceedings in execution, by an order dated 4th February, 1954. Now that Act has expired and it has been replaced by the Madras Act I of 1955 under which the decree-holder is permitted to execute his decree under the circumstances mentioned therein. In Act V of 1954, Sub-clause 2 of Section 4 says "after the expiry of one year from the commencement of the Act on application made by the defendant or the respondent or by all the defendants or all the respondents, as the case may be, the stay effected by Sub-section 1 in a suit or application shall be dissolved and the suit or application shall be proceeded with from the stage which had been reached when further proceedings in the suit or the application were stayed." Under Order 21, Rule 69, Sub-rule (2) of the CPC where the sale is adjourned under Sub-rule (1) for a longer period than thirty days, there shall be a fresh publication of the proclamation in the manner prescribed by Rule 67 unless the judgment-debtor consents to waive it. This shows, therefore, that when there is

an adjournment of sale though in the present case the adjournment was on account of the statutory provision and not at the discretion of the Court there is no need for a fresh proclamation in the manner prescribed in Rule 66 of Order 21, Civil Procedure Code. Mr. Ramanujam appearing for the petitioners contends that this being a fresh sale the provisions of Sub-section (2) of Rule 66 of Order 21, Civil Procedure Code, must apply and therefore the proclamation ordered in the present case is not a valid one as no notice had been given to his clients. Sub-section (2) of Rule 66 of Order 21 runs as follows:

2. Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale and specify as fairly and accurately as possible the various particulars mentioned from (a) to (f). Therefore if there is any variation in any of the particulars mentioned therein after the sale had been stayed then undoubtedly there may have to be a fresh settlement of proclamation because Sub-rule (2) of Rule 66 requires the particulars to be settled after notice and if the particulars have to be altered they cannot be altered without notice to the judgment-debtor but in this case what happened is, the proclamation of sale which had been settled after notice to the judgment-debtor was being republished without any alteration in the particulars mentioned in (a) to (f) of Sub-rule (2) of Rule 66. According to Sub-rule (2) of Rule 69 there shall be a fresh publication of the proclamation in the manner prescribed by Rule 67. Therefore it follows that no notice need be given to the judgment-debtor as there is no fresh settlement of the terms of proclamation. The order of the Court below is correct even though it was one without notice to the judgment-debtor as there is no obligation to give notice to the judgment-debtor in the case of a fresh publication of proclamation of sale. As stated already, if there is any attempt to alter the particulars specified in Sub-rule (2) of Rule 66 then certainly notice will have to be given to the decree-holder and the judgment-debtor. But in the present case as there was no such alteration of particulars, no notice need be given. In the result the order of the lower Court is correct and there is no reason to interfere with that. The Civil Revision Petition is dismissed with costs.