
(1921) 02 MAD CK 0011
In the Madras High Court

Sankaranarayana Pillai and Others

APPELLANT

Vs

Puthiya Vettil Thangamma and Another

RESPONDENT

Date of Decision : 23-02-1921

Acts Referred:

Citation : (1921) 41 MLJ 374

Hon'ble Judges : Spencer, J; Ramasam, J

Bench : Full Bench

Judgement

Spencer, J.—The decree that was passed by the District Munsif upon this suit for redemption, though styled a preliminary decree and

passed under the Code of Civil Procedure, 1908, provided for sale of the mortgaged properties if the money required for redemption was not paid

by a certain date. There was thus no need for any one to apply for an order for sale. But in a redemption suit, the decree-holder being the

mortgagor, it has been held in Govinda Taragan v. Veeran 21 M.L.J. 941 . No. 99 of 1915 and Abdul Kadir v. Samipandiya Tevar 39 M.L.J.

941 that he as well as the mortgagee has a right to execute the decree by applying for sale and I think we should follow those decisions.

2. As regards the applications of 4-4-1916 and 23-6-1916 for an extension of time for depositing the redemption money in Court, it may be

conceded that they did not aid the particular form of execution which has ultimately been reached, but if they were bona fide they may well be said

to have been in aid of that portion of the decree which related to redemption and I think the decree must be treated as a whole and not split up

into sections. This is the view taken in a recent decision (S.A. No. 2405 of 1917.) to which I was a party. If they were in any sense aids to

executions they should be treated as steps in aid of execution.

3. In *Abdul Kadar Rowther v. Krishnan Malaval Nair* I.L.R.(1913) . Mad. 695 Sadasiva Aiyar, J. observed that an application by the decree-

holder to give time to the judgment debtor merely as a matter of grace would be a step in retardation. In the present case the applicant though he

was the decree-holder was the person who had to pay and he was applying for time not as a matter of grace to a judgment-debtor but in order the

better to enable himself to execute the decree, the execution of which would have been completed as soon as the redemption money was paid.

4. The Subordinate Judge in appeal made the comment on these applications that it could not be said that they were made in execution. The law

only requires that they should be applications in accordance with law to the proper court and they appear to have been that.

5. I therefore agree with my learned colleague that this appeal should be allowed with costs in both courts.

Ramasam, J.

6. This is a matter arising in execution of a decree for the redemption of a usufructuary mortgage in South Malabar. The final decree of the High

Court, dated 16th October 1913, allowed three months" time for redemption. The three months expired on the 16th (not 15th) January 1914. In

his present application, dated 22-12-17 the decree-holder (Plaintiff) applied for sale.

7. It has been held in *Nani Nair v. Kaudan Ashtamoorthi Nambudripad* (1918) M.W.N. 551 that, in cases falling under the Malabar Tenants"

Improvements Compensation Act, the provisions in Order 34, Civil Procedure Code, are modified by Section 6 of that Act in so far as they are

inconsistent with the latter, and that under the focal act, only one decree in redemption suits need be passed. This was also acted upon by the

Subordinate Judge in an earlier stage of the proceedings of this case. In this view, the question decided in *An Govinda Taragan v. Veeran* ILR

(1911) Mad. 32. No. 99 of 1915, and *Abdul Kadir v. Samipandaiya Tevar* I.L.R. (1920) Mad. 835, whether a mortgagor who obtained a decree

for redemption can apply for sale, when no final decree is passed under Order 34 Rule 4 which enables the mortgagee only to apply for the

passing of a final decree does not arise, though I may add that, if it arises, I am

inclined to follow those decisions and do not share the doubts expressed by Seshagiri Aiyar, J. in the last of them.

8. But it has also been pointed out in the same case *Nani Nair v. Randan Ashtamoorthi Nambudripad* (1918) M.W.N. 55551 ""Provisions like directions for sale in default, allowing time to pay moneys declared as due and so on, not inconsistent with the Improvements Act and directed or allowed by the New CPC to be mentioned in decree for redemption or ejectment can, of course, be mentioned in decrees passed in suits falling under the Compensation Act also."

9. It follows that the mortgagor is entitled to apply for extension of the time allowed to him in the decree for redemption. In this case, two such applications were filed by the decreeholder on 4-4-1916 and 23-6-1916. The District Munsif held that they operated as steps in aid of execution and saved the present application from being barred by limitation. The Subordinate Judge reversed the order of the District Munsif on the ground that they were not in aid of the execution because (1) the applications were not made when any execution application was pending and it cannot be said that they were made in execution (which is true), and (2) they retard execution and not aid it.

10. In my opinion there is no warrant for the view that an application to take a step in aid of execution should be made in execution and no authority has been cited by the Subordinate Judge or the learned Vakil for the respondent in its support.

11. On the second ground also, I am unable to agree with the learned Subordinate Judge. Ordinarily, it is the judgment debtors that have to pay or do some act under decrees in order to avoid sale, and applications by them for extension of time, retard execution and do not aid it. But it does not follow that, in redemption decrees and similar decrees, where the decree-holder has to pay before obtaining execution and asks for extension of the time allowed to him for payment, such application does not aid him though it may retard execution of the decree. It aids him in the execution of the portion of the decree relating to redemption which he cannot get without extension of the time (see *Pitam Singh v. Tola Singh* ILR (1907) All.

301). As my learned brother observed in the course of the argument late redemption is better than no redemption. It may be that those applications

do not aid the particular kind of execution now sought, viz., sale which was a relief granted as alternative to the relief of redemption. It is enough

that they aid the decree-holder in the execution of some portion of the, decree; vide, Kalidas Manekchand v. Varjivan Rangji, I.L.R.(1888) 15

Bom. 245 note especially when that is the primary object of the decree-holder, even though, in the events that happened, the decree-holder did

not derive the assistance sought. In my opinion the proper test in deciding such a question is whether the step aids the execution. The other test is,

viz., whether accelerates or retards execution (see Kartick Nath Pandey v. Jagannath Ram Marwari ILR (1899) Cal. 285 and Abdul Kadir

Rowther v. Krishnan Malaval Nair ILR (1913) Mad. 695.) Though in many cases it amounts to the same thing, may in some cases (such as this)

turn out to be fallacious.

12. I would reverse the order of the Subordinate Judge and restore that of the District Munsif with costs here and in the Lower Appellate Court.