(1893) 09 MAD CK 0001

In the Madras High Court

Sreenivasa Thathachar and Others APPELLANT

Vs

Trichengod Pykist Rama Aiyan and Another RESPONDENT

Date of Decision : 07-09-1893

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 35

Citation : (1894) ILR (Mad) 247 : (1894) 4 MLJ 73

Hon'ble Judges : Muthusami Aiyar, J;Best, J

Bench : Full Bench

Judgement

Best, J.—The following are the facts of the case:--The plaintiff (now respondent) was assignee of ""the mortgage of 38 1/8th out of 51 1/8th

pangus of the agraharam of Byrojee effected by some of the pangudars on 8th January 1881 for a sum of Rs. 8,245-7-5 borrowed to pay off the

assessment &c. due on the whole agraharam. As such assignee, plaintiff brought a suit (Original Suit No. 2 of 1884) against the executants of the

mortgage and obtained a decree on 22nd June 1885 (Exhibit H.) While the above suit was pending the agraharam was again advertised for sale

for arrears of revenue &c. which plaintiff paid off and instituted Original Suit No. 2 of 1886 for recovery of the amount so paid and obtained a

decree for the same with interest on 27th August 1888 (Exhibit M). While Original Suit No. 2 of 1886 was pending, arrears accrued for

subsequent Faslies, and to prevent the sale of the properties for such arrears plaintiff paid a sum of Es. 3,618-2-7 on the 13th April 1887 and a

further sum of Rs. 1707-7-0 on the 4th May 1888, Exhibits A and B. In execution of the decree in Original Suit No. 2 of 1884 the 38 1/8th

paregus were sold on 24th September 1888 when 85th defendant purchased the same for Rs. 11,000, as is evidenced by the certificate filed as

Exhibit A.A.

2. The suit out of which the present appeal has arisen was instituted by plaintiff (in 1890) to recover from the entire agrahar-amdars from

defendants Nos. 1 to 84 personally the amounts paid under Exhibits A and B, with interest, costs and further interest.

3. The District Judge has found-some of the defendants to have no interest in the agraharam and therefore to be not liable but against the rest,

except the 85th defendant, he has given a personal decree. He has also exempted from liability for the debt the 38 1/8th pangus purchased by 85th

defendant at the sale in execution of the decree in Original Suit No. 2 of 1884, but has made the debt a charge on the remaining 13 pangus Hence

this appeal by defendants Nos. 1, 4, 5, 16, 17, 58 to 62, 66, 69, 74, 78, and 81.

4. The first objection urged on behalf of the appellants is that in purchasing the 38 1/8th pangus at the sale in execution of the decree in Original

Suit No. 2 of 1884, 85th defendant was merely a bena-midar for the plaintiff and that, the latter being the real purchaser, the charge is extinguished

u/s 101 of the Transfer of Property Act. On the issue whether plaintiff was the real purchaser of the 38 1/8th shares, the District Judge''s finding is

that though there are reasonable grounds for the defendants'' suspecting such to be the case, they have failed to prove it. Such also is our finding

after a careful consideration of the evidence on both sides. It is therefore unnecessary to consider the question raised with reference to Section 101

of the Transfer of Property Act.

5. Other contentions on behalf of appellants are (1) that none but registered holders of shares in the Agraharam can be held personally liable for

the claim of the plaintiffs, and (2) that the District Judge has erred in exonerating from such liability the 85th defend ant and the 38 1/8th shares of

the village purchased in his name.

6. The District Judge''s finding is that the 38 1/8th shares were sold subject to these encumbrances, but that nevertheless the shares must be held to

be not liable for the same. His reasons for this finding are as follows :--A payment made by a mortgagee or other incumbrancer to save lands from

sale for arrears of assessment is declared by Section 35 of Act II of 1864 (Madras) to be a charge dpon the land which should ""only take priority

over other charges according to the date at which the payment was made ;""

plaintiff is therefore qua such payment in the position of a mortgagee

and the decision in Shaik Abdulla Saiba v. Haji Abdulla I. L. R 5 B 13 is authority for the position that what is sold by the court in such cases is the

right, title and interest of the mortgagor as it stood at the date, of the mortgage, and such being the case it cannot be affected by the statement in

the sale proclamation the the auction sale was subject to such incumbrances. It, is difficult to follow the judge''s reasoning. It being found as a fact

that the 38 1/8th shares were sold subject, to the charge, there seems no reason why the purchaser at such sale should be allowed to hold the

same free of the charge. As the arrears were due on these 38 1/8th shares as well, there is no reason whatever for exonerating them from liability

for a proportionate share of the charge in any case.

7. As to the contention that only registered owners can be treated as defaulters within the meaning of Section 25 of the Revenue Recovery Act and

consequently the Lower Court''s decree is bad in so far as it makes defendants who are not registered holders also liable for the money due to

plaintiff, the answer is to be found in Seshagiri v. Pichu I. L. R 11 M 457 As there pointed out, the right which the Government has to proceed

against the registered proprietor in no way alters the liability of the real owner or of his holding for the arrears of revenue. Registered holders and

their property are declared liable at the option of Government in order that Government may not be hampered in the collection of revenue by being

compelled to hold complicated enquiries as to real ownership. Bat nevertheless the revenue is a debt due from the real defaulter and a charge on

the holding.

8. The remaining question is whether the decree is correct in so far as it makes the defaulters jointly and severally liable. As the entire holding was

liable for the revenue to Government, it must, I think, be held to be similarly liable to the plaintiff who has by payment of the arrears acquired a

charge upon the land under the provisions of Section 35 of the Revenue Recovery Act.

9. As to the liability of defendants Nos. 58 to 60 (appellants Nos. 6 to 8) no issue appears to have been asked for in the Lower Court. The result

is that the 85th defendant as also 38 1/8th shares purchased by him must be held liable for the remaining shares and the other defendants. The lower court''s decree will be modified accordingly.

10. The appellants must pay the 1st respondent''s (plaintiff''s) costs of this appeal. They are entitled to their costs on the 38 1/8th shares from 2nd

respondent (85th defendant) and must themselves bear the rest of their costs.

11. As to the memo of objections I find the judge has given no reasons for disallowing interest subsequent to the date of the suit.

12. I am of opinion that plaintiff is entitled to interest at 12 p.c. per annum till the date of decree, and at 6 p. c. per annum from that date to date of

payment on the amount decreed including costs;

13. The decree will be further modified accordingly.

Muthusami Aiyar, J.

14. I concur.