

(1942) 11 MAD CK 0001
In the Madras High Court

Sri Alluri Satyanarayana and Another	APPELLANT
Vs	
Ramineedi Rayalamma and Another	RESPONDENT

Date of Decision : 23-11-1942

Acts Referred:

Madras Estates Land Act, 1908 — Section 112

Citation : AIR 1943 Mad 501 : (1943) 56 LW 333 : (1943) 1 MLJ 386

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—The only question that arises for decision in this appeal is one of limitation. The suit out of which it arises was instituted

originally for a declaration that the sale of 25 acres of land which forms portion of patta No. 74 was illegal and invalid. But as during the pendency

of the suit, the defendant had succeeded in getting possession of the property, the suit was allowed to be converted into one for possession. The

contention raised on behalf of the defence was that the suit was barred by Article 12 (d) or Article 14 of the Indian Limitation Act. The trial Court

held that the suit was barred under Article 14 of the Limitation Act. This view did not find favour with the learned District Judge of East Godavari

on appeal who held that the suit was not barred by either of these articles and remanded the case for fresh disposal on the other issues that had not

been determined by the trial Court. The defendant has consequently come up to this Court in second appeal.

2. The defendant is the proprietor of Surasaniyanam estate. A portion of this estate (150 acres in area) was occupied by Rayappa Paritulu as a

ryot. He appears to have committed default in regard to the payment of rent for fasli 1333 (1923) in respect of 25 acres out of that area. A notice

was issued in 1925 u/s 11.2 of the Estates Land Act by the defendant for bringing these 25 acres to sale in realisation of his dues. Rayappa Pantulu

contested the defendant's right to sell the property u/s 112 of the Estates Land Act and brought a suit (R.S. No.26 of 1925) for that purpose in

the Court of the Sub-Collector of Rajahmundry. This suit was dismissed on the 28th August, 1926, and an appeal from that decree was also

dismissed. The trial Court stated in its judgment that it was dismissed on the 17th March, 1927. The appellate Court only referred to the month of

March, 1927, in which the appeal was dismissed but did not mention the date. There is no doubt that it was dismissed before the 31st March,

1927, as a revised decree. (Ex. XIX) was passed on the 31st March, 1927. No objection was taken to the statement of fact by the trial Court that

the appeal was dismissed on the 17th March, 1927 and in the absence of any objection on behalf of the appellants, I am inclined to accept that

date as the one on which the appeal was dismissed by the appellate Court.

3. It appears that Rayappa Pantulu had mortgaged the 150 acres in Patta No. 74 and that property was sold in execution of the mortgage decree.

It was purchased by the plaintiff's agent on behalf of the plaintiff on the 8th January, 1929, and the sale was confirmed on the 24th July of that year.

4. The defendant who had a notice issued u/s 112 of the Estates Land Act in 1925 did not make an application within thirty days of the date of the

disposal of either the suit R. S. No. 26 of 1925 or of its appeal (whether the term "disposal" is taken to mean the disposal by the first Court or by

the appellate Court although I am, as at present advised, inclined to the view that it means final disposal by whichever Court it may be) as required

by Section 115, Sub-clause (2) of the Estates Land Act. But he made an application (Ex. C) on the 9th January, 1930, i.e., almost two years and

nine months after the appellate Court had confirmed the decree of dismissal passed in Rayappa Pantulu's suit. Learned Counsel for the appellants

relied on another application shown in the column of remarks to have been made by his clients on the 7th of March, 1927. A mere allegation by

the appellant in his application Ex. C that he had made a prior application earlier would not by itself be evidence of the fact that such an application

was given by him. It is a self-serving statement and would not be relevant for

that purpose. But even if it is, it could be of no avail to him as this was not made until about six months after the decision of the trial Court and ten months before the decision of the appellate Court and in neither case within 30 days of their disposal as required by law. Learned Counsel for the appellant urged that it was the duty of the plaintiff to establish that no sale application had been filed by the defendant within the time prescribed by law, but this is not correct. It is obviously the duty of the landholder who relies on the validity of the sale to show that an application was made within the period prescribed u/s 115 of the Estates Land Act and it is only when the application is found to have been made that jurisdiction would be found to have been conferred on the Collector to have proceeded with the sale which he had conducted as the landholder's agent. If the landholder wishes to contend in a Court that the sale had been held at his instance after he had fully complied with the requirements of law, the onus would apparently lie on him and not on the other side to show that the terms of the statute had been complied with. In the absence of any other allegation--not to say of proof--the only conclusion which one can reach is that no application was made on behalf of the defendant within thirty days of the disposal of the suit or of its appeal, if one was preferred--as happened to be the case here. If no such application is proved to have been made the Collector who was really carrying out the will of the landholder, as mentioned in Section 111 of the Estates Land Act, must be found to have had no jurisdiction to, appoint an officer to conduct the sale. It may be borne in mind that Section 116 of the Estates Land Act which is applicable to the present case was different and must not be confused with the present Section 116 of that Act--a mistake which was committed by the trial Court. If the jurisdiction of the Collector to appoint an officer to conduct the sale was not invoked by or on behalf of the defendant as required by Section 115 of the Estates Land Act, the subsequent proceedings taken by the Collector could be of no legal value and a sale held in consequence must be found to be void. if that be so, neither of the articles relied on by the defendant would have any application. Moreover, the sale under the Estates Land Act is not in pursuance of a decree or order of a Collector or other officer of Revenue, but it is the landholder who is authorised u/s 111 of the Estates Land Act to sell the

property or any part thereof. It is unnecessary for me to discuss this point at any length, as I find that two learned Judges of this Court have taken

the same view (vide Subbayya v. Kristayya (1926) 52 M.L.J. 390 and Kootoorlingam Pillai and Others Vs. Sennappa Reddiar and Others,). I

find myself in agreement with the view expressed by them. Learned Counsel for the appellant drew my attention to a decision of a Division Bench

in Kamalammal v. Chockalinga Asari (1923) 45 M.L.J. 843 but that decision has been distinguished--and if I may say so with respect--rightly by

Ramesam, J., in Kootoorlingam Pillai and Others Vs. Sennappa Reddiar and Others, . Moreover the suit, with which the Division Bench was

dealing, was to set aside a revenue sale which is entirely different from a sale by the landholder under the Estates Land Act. Article 12 has

therefore no application. Nor would Article 14 be applicable to the case, although I must admit that the reasons given by the lower appellate Court

to hold that article to be inapplicable are not correct. The plaintiff who had purchased the right, title and interest of the judgment-debtor in the

property could not be held to be an entire stranger. Nor would the question that the suit is for possession be by itself sufficient. If it was necessary

for the plaintiff to get the decree, order or any other act of a Government officer referred to in Article 12 (b) or Article 14 of the Limitation Act set

aside before he could get a decree for possession, it would be essential for him to get it set aside within the time referred to in these Articles before

a decree for possession can be passed in his favour. But if the order of the officer concerned is illegal, as I find it to be the case here, it would not

be necessary for the plaintiff to bring a suit to set aside the sale and he would be entitled to wait until the sale was either attempted to be enforced

or enforced against him. This was held by their Lordships of the Privy Council in AIR 1927 217 (Privy Council) . Moreover the act referred to in

Article 14 of the Indian Limitation Act must be, as held in Shivaji Yesji Charan v. Collector of Ratnagiri I.L.R.(1886) 11 Bom. 429 and approved

of in Rameswaram Devasthanam Vs. Secretary of State and Others, of a quasi judicial nature and not merely that of an executive officer who is, in

carrying out the will of the landholder, acting as his agent and is permitting his department to be used for the purpose of conducting the sale. In

either view of the case Article 14 would have no application.

5. The appeal accordingly fails and is dismissed with costs.
6. Leave refused.