
(1924) 03 MAD CK 0074
In the Madras High Court

Sundarammal and Pachalla Doraiswami Iyengar and Another APPELLANT
Vs
Sri Mahant prayaga dosjee Varu RESPONDENT

Date of Decision : 27-03-1924

Acts Referred:

Madras Estates Land Act, 1908 — Section 125

Citation : 82 Ind. Cas. 721

Hon'ble Judges : Wallace, J

Bench : Single Bench

Judgement

Wallace, J.—The facts necessary for the disposal of this appeal are as follows: One Sellappa Asari was an occupancy tenant in the 1st defendant's estate. On 4th May 1901, he mortgaged the five items of the plaintiff property. The mortgagee sued to recover his money and obtained a decree for sale of mortgaged property on 4th June 1912. It became final on 9th January 1913 and the property was sold in execution of the decree on 15th November 1915. The plaintiff purchased all the five items on 7th June 1916 from the auction-purchaser and got delivery through Court on 31st January 1917. In the meantime on 22nd March 1913 items. Nos. 3 and 4 of the plaintiff property were sold by the landlord the 1st defendant for the arrears of rent on the holding by Sellappa Asari and the 1st defendant alleges that he bought in these properties for eight annas and got delivery of them on 25th October 1915 and that he sold them again to defendants Nos. 2 to 8, The question at issue was whether the plaintiff's purchase on the footing of the mortgage decree prevails against the 1st defendant's purchase in the rent sale. The lower Appellate Court has held that the plaintiff's title did not prevail against the 1st defendant's rent sale title, and therefore, dismissed the suit and the plaintiff appeals.

2. I cannot see why the plaintiff was not given at least a decree for items Nos. 1, 2 and 5. The 1st defendant puts forward no claim to items Nos. 1 and 2 nor do any of the other defendants; and as regards item No. 5, although the 1st defendant claims that he bought that also in the rent sale, his sale certificates

Exhibits I and II, show that that was not so.

3. As regards item No. 3, a garden with an indigo vat and item No. 4 nanjai, it is not quite easy to say definitely what field numbers they correspond to, but, so far as I can ascertain from the documents filed in this case, item No. 4 seems to correspond to nanja Nos. 200 and 201, while the garden in item No. 3 appears to be described under Nos. 240 and 244 with an area of 10 acres and 3 cents, and the vat appears under Nos. 240 and 241 with an area of 1 acre, and 8 cents.

4. u/s 125 of the Madras Estates Land Act, under a sale for arrears of rent, the purchaser takes subject to any encumbrance created before the passing of the Act. The encumbrance in this case was created in 1901. Prima facie then the rent sale is subject to it; but the contesting defendants contend that the mortgage was extinguished when the decree was passed and that, as 1st defendant was not a party to the mortgage suit, the decree in it will not bind him. The lower Appellate Court has accepted both these contentions, but it has wholly misunderstood one crucial fact in the case, and that is that the 1st defendant never put an end, under cover of his rent sale, to the occupancy right of the defaulter. The rent sale was on 22nd March 1913. Under Exhibit D(1) dated 15th February 1915 the 1st defendant had issued a patta for Fasli 1324 to the defaulter for Nos. 200 and 201 (1 acre and 8 cents), and 240 (10 acres and 3 cents) i.e., for the whole of items Nos. 3 and 4; so that, for this Fasli the 1st defendant issued pattas to the defaulter for all that he ostensibly bought in under his rent sale. The patta for the previous Fasli 1323 is not filed but there is no presumption that it will be anything different from the patta for Fasli 1324. Prior to Exhibit D (1) but subsequent to the rent sale, is a notice Exhibit D dated 23rd June 1914 by 1st defendant to the defaulter informing him that arrears are due on the indigo vat and that, unless they were paid up, the holding would be sold. This was the holding already sold for arrears of rent on 22nd March 1913 and alleged to have been bought in. The sale was apparently a sham.

5. First defendant alleged a sort of delivery through Court on 25th October 1915 of the items sold at rent sale on 22nd March 1913. There is no documentary evidence of this delivery and that it was a sham is clear from the facts that the sale itself appears to have been a sham and that on 2nd May 1916 1st defendant again issued patta for Fasli 1326 to the defaulter for Nos. 240 and 241, area 1 acre and 8 cents, the indigo vat, and followed it up by a similar patta Exhibit D-3 on 25th May 1918 for Fasli 1327. On 28th January 1917 and 30th October 1917 he accepted rent from plaintiff for the indigo vat on behalf of the registered pattadar, Sellappa Asari i.e., the defaulter (see Exhibits D-4 and D-5). On even date with Exhibit D-3 is Exhibit VI a patta for Fasli 1327 to 2nd defendant for item No. 3 (garden) and No. 4. This is the first issue of a patta to any one else but the defaulter.

6. There is absolutely no evidence that the occupancy tenancy of the defaulter had ever been terminated by any real and proper legal proceedings on, or before 15th November 1915 the date of the sale in execution of the mortgage-decree. It

was in the holding and possession of the defaulter and was his property on the date of that sale. This is the property which has passed to that plaintiff, of which he got delivery on 31st January 1917, and of which 1st defendant never got delivery. First defendant, therefore could not convey it to any one else. He never enforced his rights under the alleged rent sale and never terminated the defaulter's occupancy right which in consequence of his inaction, passed to plaintiff, beyond the reach of 1st defendant, long before the date of patta to 2nd defendant. It is impossible, therefore, to see how the plaintiff's right on the footing of the Court sale could possibly be interfered with by the 1st defendant's right under his rent sale. The ruling in *Vemanna Venkatachella Naidu v. Ethirajammal* 60 Ind. Cas. 192 : 13 L.W. 61 : 39 M.L.J. 597; (1921) M.W.N. 189 : 44 M.P 220 relied on by the Subordinate Judge has no application to this case since there no patta was issued after the sale for arrears of rent and the occupancy right of the tenant had obviously been terminated by the rent sale.

7. I must, therefore, reverse the decree of the lower Appellate Court and restore that of the District Munsif with costs to the plaintiff from defendants Nos. 1 and 2 here and in the lower Appellate Court.

8. Second Appeal No. 1131 of 1921 follows the decision in this case and the lower Appellate Court's decree must be reversed and the suit dismissed with costs throughout.