

(1922) 04 MAD CK 0002
In the Madras High Court

Thavasimuthu Nadar and Others

APPELLANT

Vs

Balaguruswami Nadar and Others
In Re: Sir M.C.T.
Muthia Chetty

RESPONDENT

Date of Decision : 04-04-1922

Acts Referred:

Citation : AIR 1923 Mad 304 : 70 Ind. Cas. 673 : (1923) 17 LW 64

Hon'ble Judges : Kumaraswamy Sastri, J

Bench : Single Bench

Judgement

Kumaraswamy Sastri, J.—These are two applications made by Sir M.C.T. Muthia Chetty for an injunction restraining the plaintiffs and

defendants and the Receivers appointed in the suit from interfering with or disturbing Ids possession of the village of Melamarudur, which the

parties to the suit seem to claim as their property. This village was the subject of a mortgage-decree obtained in the year 1915. This decree was

assigned to Sir M.C.T. Muthia Chetty and he brought the village to sale which was held on 15th July 1918. The Nadars, represented by the

plaintiffs and defendants in this suit, objected to the proclamation of sale and on their petition being disallowed, they filed an appeal which was also

dismissed by the High Court. The sale took place on 15th July 1918. An application was made to set aside the sale. That application was also

dismissed by the lower Court. Against this an appeal was filed to the High Court and it was also dismissed. The sale, therefore, in execution of the

decree is now final and binding on the Nadars. The sale-certificate has been issued in favour of Sir M.C.T. Muthia Chetty. On the nth September

1918 Sir M.C.T. Muthiah Chetty agreed to sell and convey the properties to one M.T.K.L. Annamalai Chetty for a profit of Rs. 20,000 but

Annamalai Chetty did not carry out the terms of the agreement and we may, therefore, dismiss him from consideration. So far, therefore, as the applicant in the present application is concerned, he has got a valid title to the property which cannot be impeached by the Nadars. He also got symbolical possession from Court. As the property is in the possession of the tenants the only possession he can get is symbolical possession under Order XXI, Rule 93, of the Civil Procedure Code. He also got rental agreements from the tenants and, according to his affidavit filed with the application, he got possession from the tenants but in getting the harvested crops, he is being obstructed by one Singaravelu Nadar, who purports to act on behalf of defendants Nos. 2 to 5. The present application is for an injunction restraining the defendants and Receivers from interfering with the possession. So far as the defendants are concerned, it is alleged that Sir M.C.T. Muthiah Chetty is under an agreement to re-convey the property to them and that he has received Rs. 85,000 deposited with him by the deceased Guruswamy Nadar in the name of his wife Rajarajeswari Ammal and a sum of Rs. 12,000 deposited by the 1st defendant. Out of this sum of Rs. 12,000 the 1st defendant has already withdrawn Rs. 5,000 to meet payments directed by an order of the Court. It seems to me that it is unnecessary, to decide on this application whether there was or was not an agreement to re-convey the property. No writing is produced evidencing the agreement but assuming that there was an agreement to re-convey to the Nadars, that agreement, u/s 54 of the Transfer of Property Act, conveys no title in the property. It is an executory contract which has to be fulfilled by the Nadars by paying the balance of the purchase-money, even if their case is true, and executing a sale-deed after the payment of the moneys due. It is not necessary to go into this question in this application and I shall say nothing as regards the rights of the parties under the agreement. It is enough to state that, so far as the CPC and the Transfer of Property Act are concerned, there can be no question of the purchase having been made benami or of any possession having passed under the agreement. As a matter of fact, having regard to the Full Bench decision in Kurri Veerareddi v. Kurri Bapireddi 29 M. 336 an agreement to sell gives no right to the parties to remain in possession and if they were in possession the person having valid title can eject them. That being the case, it seems to me the question is whether

on this application, having regard to what has happened, the applicant is not entitled to ask that the title which he has got by the Court-sate and possession he has got thereunder by Order XXI, Rule 93, and the tenants attorning to him, should be maintained. A preliminary objection is taken that the Court has no jurisdiction to pass an order on an application in a suit to which the applicant is not a party. When a Receiver has been appointed, I see no valid objection to a third patty whose property is being interfered with under a claim by a Receiver or the parties to the suit, from applying to the Court for redress. The only ether way in which the applicant can have any redress would be to file a separate suit, getting the leave of the Court to implead the Receivers and then ask by means or an application that the parties to that suit and the Receivers should be restrained from interfering with his rights. I think the authorities are clear. In cases where the Court can give adequate relief where a Receiver has been appointed, the proper course for the Court will be to pass directions on this application and not compel or drive the applicant to file a separate suit and render the estate liable for costs. The authorities referred to by the Advocate-General Mahomed Medhi v. Zoharra Begum 8 Ind. Dec. 728 Mr. P. Roy Chowdhury v. Nolini Prokash Sen 18 C.W.N. 289 and Haneswar Ghosh v. Rakhal Das Ghose 20 Ind. Cas. 683 ; Rowland Hudson v. John Pierpont Morgan 1 36 C. 713 ; Neale v. Pink (1846) 60 E.R. 693 which was confirmed on appeal in Neate v. Pink (1851) 42 E.R. 344 and Woodroffe on Receivers, page 74, support the view that the proper course is for an application to be made in the suit in which Receivers have teen appointed. When the Receivers are appointed in this suit they represent the parties and the properties are in custodia legis. It seems to me to be unnecessary to compel the applicant to file a separate suit against the Receivers and parties for an injunction and for other releifs which only threw an additional burden on the estate. I am, therefore, of opinion, that I have got jurisdiction to pass an order. On the merits, It seems to me none of the; parties to the suit have got any right under colour of an alleged title to the property to interfere with the possession of third persons. The Attorney for the Receivers states that he has done nothing to interfere with the possession of Sir M.C.T. Muthiah Chetty and that he does not want to do anything; but the position taken up by K. Ramachandran for defendants Nos. 2 to 5 is certainly ambiguous.

He states that though it is alleged Sivalinga Nadar is interfering with the possession of the applicant on behalf of the defendants they did not give him authority to do any unlawful act. But there can be little doubt that Sivalinga Nadar is there on their behalf and that he is doing his best to see that the tenants do not pay any rent to Sir Muthiah Chetty as they are bound to do. I think, therefore, injunction should be granted. There will be an injunction restraining Nos. 1 and 2 plaintiffs and their next friends and Nos. 1, 2 and 3 defendants from interfering with the possession of the applicant, Nos. 1, 2 and 3 defendants will pay the taxed costs of this application. The taxed costs of the Receivers will come out of the estate.