

(1935) 04 MAD CK 0017
In the Madras High Court

Thayammal

APPELLANT

Vs

Subramania Gurukkal and Others

RESPONDENT

Date of Decision : 08-04-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 147

Citation : (1935) 42 LW 699 : (1935) 69 MLJ 850

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—This Second Appeal arises out of a suit brought to set aside a rent sale under the Estates Land Act. The plaintiffs are

admittedly entitled to a one-fourth share in the holding, defendants 1 to 3 being entitled to the remaining shares. It is not necessary for the purpose

of this Second Appeal to decide what exactly the arrangement was between plaintiffs and defendants 1 to 3 as to the way in which they should pay

the rent due to their landlord, during the time that the lease, Ex-A, was in force and who as between them was really liable to pay the amount for

the year in respect of which the rent sale took place. Defendants 1 and 2 admit that they were personally served with the notice of sale. Beyond

filing a written statement jointly with defendants 1 and 2, the 3rd defendant has put forward no specific case. Both the lower Courts have found

that the plaintiffs were not served with notices of the sale and no attempt was made to serve them personally. They even go further and suspect

collusion between defendants 1 to 3 and the Zamindar's officials with a view to deprive the plaintiffs of their share. Here again it is not necessary

for me to base my decision on the case of collusion.

2. There is no scope in the circumstances of the case for the application of the principle of Section 147 of the Estates Land Act. It therefore

follows that the notice u/s 112 must have been served on all the sharers. Vide Kootoorlingam Pillai and Others Vs. Sennappa Reddiar and Others,

and Nalla Karuppan Ambalam v. Vellamarunthan Ambalam (1932) M.W.N. 1114. The Courts below were right in holding that the plaintiffs are

not bound by the rent sale in these circumstances. The Second Appeal must therefore be dismissed with costs as against respondents 1 to 3.

3. Alternatively, the appellant, the representative of the rent sale purchaser, contends that the sale must be set aside only as regards the plaintiffs"

share and not in its entirety. This contention was raised in the trial Court by issue No. 5. The District Munsif disposed of it by a single line, that the

sale cannot be set aside in part and must be set aside in toto. The point does not seem to have been urged before the lower appellate Court. But as

the appellant has been throughout pressing for the confirmation of the sale in its entirety, there is nothing to preclude her from claiming that it

should be confirmed at least in respect of the shares to which defendants 1 to 3 are entitled. On behalf of the 1st defendant, who alone appears

before me, Mr. Sankara Aiyar contends that the sale must either be set aside in its entirety or confirmed in its entirety and the law does not

contemplate its being set aside in part. He argues that the service of notice u/s 112 has been held to be a matter going to the jurisdiction of the

selling officer and that if all the necessary pre-requisites have not been complied with, he must be held to have no jurisdiction at all and it would

follow that the sale is a nullity. I am not by any means satisfied that these contentions are well-founded. The Estates Land Act does not make

provision in itself for failure to comply with the provisions of Section 112. It is only on general principles of justice and equity that this Court has

held in a number of cases that the service of notice contemplated by Section 112 is such an essential condition that non-compliance with it will

justify the Court in holding that the sale is void and not merely voidable. I have therefore only got to see how far such general considerations

compel me to go and I am not hampered by any statutory provisions directly bearing upon the matter. Apart from suggestions of fraud and

collusion on the part of defendants 1 to 3 to injure the plaintiffs, I have the fact that in the written statement filed by defendants 1 to 3 they insisted

that the plaintiffs' suit should be dismissed with costs. Whatever hesitation I may feel as to the interpretation of Section 112 of the Estates Land

Act I feel that the Court will be placing a premium on dishonesty and misconduct if I should now allow defendants 1 to 3 to turn round and say "set

aside the sale even as regards our shares in the holding". They never wanted it to be set aside and unless I am satisfied that the law compels me to

thrust this benefit upon them, I do not think I will be justified in doing so.

4. Mr. Sankara Aiyar relies upon the analogy of Section 131 of the Estates Land Act corresponding to Order 21, Rule 89 of the CPC and argues

that if any one of the defaulters makes a payment under these provisions the sale must be set aside as a whole and not in respect merely of his

share. I do not think this furnishes any true analogy. Taking for instance a case under Order 21, Rule 89 of the "Civil Procedure Code, if there are

a number of judgment-debtors whose interests, say, in joint family property have been brought to sale, it may be open to any of them to get the

-whole sale set aside by payment under Order 21, Rule 89, but if any one of them impeaches the sale on other grounds, for instance, for non-

representation of one of them by a proper guardian or for non-issue to him of notice under Order 21, Rule 22, it does not at all follow that the sale

must be set aside as a whole and not merely in respect of that particular judgment-debtor's share. S112 and the succeeding sections contemplate

part of the holding being sold. Prima facie that will merely refer to a geographical part, that is, any single field if that will suffice to satisfy the arrears

of rent; but even that is an indication that the law does not insist upon the holding being sold in its entirety. If, as the result of a rent sale, one of the

fields comprised in a holding can pass to a stranger, there is nothing very anomalous in holding that the interests of some of the tenants holding

under a single patta may pass to the purchaser. The possibility of such partial validity seems to be recognised by Mr. Justice Ramesam in his

observations in Kootoorlingam Pillai and Others Vs. Sennappa Reddiar and Others, .

5. Looking at the matter from another point of view, if the rent sale was the result of fraud or collusion to which defendants 1 to 3 were parties the

principle indicated in Hemendra Lal Roy v. Salimullah (1910) 7 I.C. 21 : 12 C.L.J. 336 would justify the case being dealt with as one of a private

alienation by misuse of the machinery of public sale and it may be operative to transfer the interests of defendants 1 to 3 though not to affect the interests of the plaintiffs.

6. As stated by me already, the question is, how far in the application of general principles of justice and equity the Court ought to grant relief in

respect of improper sales. The use of the word "justification" in some of the cases ought not to be pressed too far. The learned Judges were not

then dealing with effect of the sale as against persons who had been duly served; they merely meant to indicate that the non-service of notice is

such an important omission as to justify the Court in ignoring the sale so far as the person not served with notice was concerned.

7. I am therefore of opinion that the decree of the Courts below should be modified by inserting the words ""so far as the Plaintiffs" share is

concerned"" after the words ""the sale is hereby set aside"" in the decree of the District Munsif's Court. But as defendants 1 to 3 and defendants 5

and 8 have, during the greater part of the case, sailed together, I am not disposed to make any order as to costs as between them.