

(1938) 10 MAD CK 0010
In the Madras High Court

The Co-operative Society

APPELLANT

Vs

R.M. Lakshmanan Chettiar

RESPONDENT

Date of Decision : 28-10-1938

Acts Referred:

Citation : AIR 1939 Mad 135 : (1938) 48 LW 862 : (1939) 1 MLJ 117

Hon'ble Judges : King, J

Bench : Division Bench

Judgement

King, J.—This appeal arises out of an instrument of mortgage executed by one Minakshisundaram Pillai in favour of the appellant, a Co-

operative Society in Veerapandi. The items of property entered in the mortgage were Section Nos. 1167/1 and 1167/4. The matter was referred

by the Society to the Deputy Registrar who in his turn referred it to an arbitrator who passed an award in July, 1932, declaring the mortgage to be

good against these two items. About two years later, it appears to have been discovered that Section No. 1167/1 was a wrong number in the

mortgage deed and that the correct number ought to have been 1175/3. A reference was made to the Deputy Registrar to amend the decision of

the arbitrator accordingly and the Deputy Registrar after consulting the mortgagor has so amended the decision. This amendment took place in

June, 1934, and sometime later, the Society brought an execution application on the strength of the amended award and purchased the mortgaged

property including 1175/3 on 13th December, 1934. Meanwhile, the present respondent had also acquired rights in this property. He obtained a

decree against the mortgagor and his sons and in the course of execution that decree attached 1175/3 and subsequently brought it to sale and

purchased it himself on the 19th July, 1934.

2. The main question which has arisen in this appeal is : Whether the order of the Deputy Registrar substituting 1175/3 for 1167/1 in the original

award filed by the arbitrator is an order u/s 51(5) of the Co-operative Societies Act. If it is such an order, then, according to the provisions of

Section 51(c), it cannot be called in question in any Civil Court. The provisions of Section 51(5) are as follows:

The Registrar may, of his own motion, or on the application of a party to a reference, revise any decision thereon by the person to whom such

reference was transferred or by the arbitrator or arbitrators to whom it was referred.

3. The learned Subordinate Judge who passed the first appellate decree in this case has held that the action of the Deputy Registrar was not taken

u/s 51(5), that it is therefore not final and that the question, whether the mortgage is good with reference to 1175/3 or not, is one which must be

remanded to the first Court for disposal.

4. In the appeal it is contended by the Society that as already mentioned, the decision falls u/s 51(5) and is final. There are no authorities on this

point and it will depend entirely upon what is meant by the words, ""Revise any decision"". The learned Subordinate Judge seems to me, to have

given too narrow a meaning to the word ""revise"". He seems to think that "revise" has a special legal meaning of taking proceedings in revision, and

that some such rules as govern the interference by a Revisional Court are the rules which alone would govern any interference by the Registrar. It

seems to me that the word "revise" was here used in the widest sense as practically equivalent to "correct" or "amend" and that it is not necessarily

because some important point of law is raised, but because of any kind of error, however simple it may appear that the revisional jurisdiction can

be invoked. In the wider sense of the term "revise" it is of course obvious that to substitute one figure for another is an act of revision. It is however

argued for the respondent here that there is no actual positive reference made either by the Society or by the Registrar to this particular sub-section

in their correspondence and proceedings. That again seems to me quite immaterial as also is the fact that for some reason or other, the notice

issued by the Registrar was headed as u/s 38. It is agreed that the Registrar

cannot possibly have acted in the matter of this decision u/s 38, or indeed under any other section of the Act, and although he might not have consulted the Act before he drew up his proceedings, it cannot seriously be contended that he had no jurisdiction to correct the figure. It seems to me obvious that the Registrar has done something which Section 51(5) of the Act empowered him to do, and therefore, whether he had or had not the source of his powers consciously before his mind at the time he made his decision, that decision must be deemed to have been made under this subsection. It follows therefore that his decision is final and the mortgage has been held good with reference to 1175/3, secured against any challenge by the respondent in this appeal.

5. The suit here was by the respondent to recover possession of 1175/3 from the Society. The Society actually took delivery of the property in March, 1935. As already mentioned, the purchase by the respondent in execution of his decree was in July, 1934 and the purchase by the Society was in December, 1934. On a question of priority of date, therefore, it is quite clear that the title of the respondent to the equity of redemption in respect of this piece of property cannot be assailed. I have already held that under the provisions of the Co-operative Societies Act, the title of the Co-operative Society as mortgagee is equally unassailable.

6. In the result, the only proper order, it seems to me to pass is to set aside the decrees of both the Courts below and to remand the suit to the first Court with directions to frame a suitable decree for redemption of this mortgage by the defendant. The appellant's costs throughout must be paid by the respondent.