

(1943) 10 MAD CK 0027
In the Madras High Court

Thulasi Ethirajamma and Another

APPELLANT

Vs

Chunduru Kannayya Gupta and Others

RESPONDENT

Date of Decision : 12-10-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10

Citation : AIR 1944 Mad 165 : (1943) 56 LW 716 : (1943) 2 MLJ 594

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The plaintiff in O.S. No. 4 of 1942 on the file of the District Judge of Nellore prayed for a declaration that the suit property belonged to her mortgagors, defendants 6 to 9, and not to defendants 1 to 5, who were claiming title. During the course of this suit the decree obtained on the mortgage was executed and the present respondent purchased the property in court-auction. The plaintiff thereby lost all interest in the property and the respondent, having acquired the property, sought to be brought on record as the plaintiff in the suit in the place of the existing plaintiff. His application was allowed.

2. The application was made under Order 1, Rule 10 and Order 22, Rule 10, Civil Procedure Code. I agree with Mr. Satyanarayana Rao that Order 1, Rule 10 does not apply; but I cannot agree that Order 22, Rule 10 does not permit of his being added as a party. Mr. Satyanarayana Rao's argument with regard to the applicability of Order 22; Rule 10 is that that rule applies only to some devolution of interest and that there was no devolution of any interest here; because the auction-purchaser acquired title to the whole of the property whereas the plaintiff had merely a mortgagee's right. He pointed out that it was held in A. Mallari Rao Vs. Sivagnana Vandayar, following Jainulabdin Sahhib Vs. Krishna Chettiar, that an auction-purchaser in execution of a mortgage decree was the representative of the judgment-debtor and not the representative of the decree-holder, just as would be the case if the decree had been one for money. Mr. Satyanarayana Rao therefore argued that he did not acquire the interest of the decree-holder but

that of the judgment-debtor. The judgment of the lower Court is sought to be supported on two grounds; one is that within the meaning of Order 22, Rule 10, the respondent is the representative of the plaintiff, and, the other that in any event he is the representative of the defendants 6 to 9, and is therefore entitled to be brought on record in their place. I think the respondent is entitled to succeed on both these grounds. It is true that there was no assignment of any interest; but I am not prepared to say, merely because for the purposes of Section 47 the auction-purchaser is not a representative of the decree-holder, that the interest of the mortgagee did not devolve on him. However that may be, he acquired an interest in the land, even though that interest was not identical with that of the plaintiff. *Maharaja Sir Manindra Chandra Nandi v. Randal Bhagat* (1922) 3 M.L.J. 589 : 49 I.A. 220 : ILR 1 Pat. 581 (P.C) was cited on behalf of the appellant; but the remarks relied on have application to a very different set of circumstances from what are found in this case. Their Lordships did not say that the word "creation" in rule 10 of Order 22 had no meaning.

3. Even if we consider that the interest of the judgment-debtors, defendants 6 to 9, alone devolved on the petitioner, the petition of the respondent would have to be allowed; because if he is added as a party to the suit in the place of defendants 6 to 9, he would be entitled to be transposed thereafter as plaintiff,

4. The appeal fails and is dismissed with costs.