
(1935) 01 MAD CK 0002
In the Madras High Court

Thummalapalli Mangayya

APPELLANT

Vs

Thummalapalli Sreeramulu and Others

RESPONDENT

Date of Decision : 22-01-1935

Acts Referred:

Citation : AIR 1935 Mad 420 : (1935) 41 LW 571

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The auction-purchaser who is respondent 2 in this appeal applied to the Subordinate Judge at Ellore for amending a

sale certificate issued to him by showing the correct survey number of the property sold, or in the alternative, for setting aside the sale and ordering

refund of the purchase money. The Subordinate Judge directed the amendment of the sale certificate as prayed for. But on appeal by the

judgment-debtor, defendant 9 in the suit, the District Judge of West-Godavari held that the Subordinate Judge had not exercised his inherent

powers of amendment in a proper way, and set aside the order of the Subordinate Judge allowing amendment of the sale certificate. But, being

apparently impressed by the justice of the auction-purchaser's case, he allowed the alternative prayer, set aside the sale and ordered refund. The

present appeal to this Court is by neither the auction-purchaser nor the judgment-debtor but by the decree-holder, and the preliminary argument

addressed to me in this appeal is that the District Judge had no jurisdiction to entertain an appeal from the order of the Subordinate Judge, as that

order was passed in the exercise of the inherent powers vested in the Subordinate Judge. It is not seriously contended before me that this argument

is not well founded. It is clear from the order of the Subordinate Judge himself that he ordered amendment of the sale certificate in the exercise of his inherent powers for he himself observes that the Court has got inherent powers to rectify mistakes and that this could be done even suo-motu when there are mistakes either in the sale proclamation or sale certificate or the decree. The learned District Judge also was aware of the fact that the amendment was ordered by the Subordinate Judge in the exercise of his inherent jurisdiction, and he set aside the order of the Subordinate Judge because he thought it was not a proper exercise of inherent jurisdiction. It was however not within the jurisdiction of the District Judge to decide whether it was a proper exercise of inherent jurisdiction or not, for no appeal lay to the District Judge from an order passed in the exercise of inherent jurisdiction for the purpose of rectifying or correcting mistakes in the record of the proceedings of the Court. I must therefore uphold the contention before me that the learned District Judge had no jurisdiction to entertain the appeal, and that his decree in appeal must be set aside as being without jurisdiction. It follows therefore that the appeal must succeed and the decree appealed from must be set aside and the order of the Subordinate Judge restored.

2. The only remark that has to be made before concluding this judgment is that the Additional Subordinate Judge ought to have amended the decree also when he found that the error which had been made had crept into the decree as well as into the sale certificate. To order an amendment of the sale certificate without ordering a corresponding amendment of the decree is likely to complicate matters, and would not be quite proper, even otherwise for a Court to do. I understand however that the decree has since been suitably amended, and it is therefore unnecessary to direct an amendment of the decree to bring it in accordance with the description of the property contained in the mortgage-deed sued on. The appellant is entitled to have his costs of this appeal from the appellant in the lower appellate Court who is respondent 1 in this appeal.