

(1935) 04 MAD CK 0001
In the Madras High Court

Thyammal

APPELLANT

Vs

Subramania Gurukkal and Others

RESPONDENT

Date of Decision : 08-04-1935

Acts Referred:

Madras Estates Land Act, 1908 — Section 147

Citation : AIR 1936 Mad 86 : 159 Ind. Cas. 165

Hon'ble Judges : Vardachariar, J

Bench : Single Bench

Judgement

Vardachariar, 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 Nos. 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 the plaintiffs and defendants Nos. 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 Nos. 1 and 2 admit that they were personally served with

the notice of sale. Beyond filing a written statement jointly with defendants Nos. 1 and 2, the third defendant has put forward no specific case.

Both the lower Courts have found that the plaintiffs were not served with notice of the sale and no attempt was made to serve them personally.

They even go further and suspect collusion between defendants Nos. 1 to 3 and the zemindar'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 Filial v. Sennappa Reddiar 61 M.L.J. 203 : 134 Ind.

Cas. 184 : 31 L.W. 94 : Ind. Rul. (1932) Mad. 640 : AIR 1931 Mad. 721 and Nallakaruppan Ambalam and Another Vs. Vellamarunthan

Ambalam and Others, . 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 Nos. 1 to 3.

3. Alternatively, the appellant, the representative of the lent 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 Nos. 1 to 3 are entitled. On behalf of the first defendant, who alone

appears before me, Mr. Sankara Ayyar 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 the suggestions of fraud and

collusion on the part of defendants Nos. 1 to 3 to injure the plaintiff? I have the fact that in the written statement filed by defendants NOS. 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 Nos. 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 Ayyar relies upon the analogy of Section 131 of the Estates Land Act corresponding to Order XXI, Rule 89 of the Civil

Procedure Code, and argues that if any one of the defaulters makes a payment under these provision, 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 XXI, 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 XXI, 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 XXI, 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. Section 112

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 Justice Ramesam in his observations in Kootcorlingam Pillai v. Sennappa Reddiar 61 M.L.J. 203 : 134 Ind. Cas. 184 : 31 L.W. 94

: Ind. Rul. (1932) Mad. 640 : AIR 1931 Mad. 721.

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

parties, the principle indicated in *Harendra Lal Roy v. Salim-ullah* 7 Ind. Cas. 21 : 12 C.L.J. 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 interest of, defendants Nos. 1 to 3 though not to affect the interests of the plaintiff.

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

there dealing with the 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 plaintiff's share is

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

defendants Nos. 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.