

(1941) 05 MAD CK 0010
In the Madras High Court

Tirugnanavalli Ammal

APPELLANT

Vs

P. Venugopala Pillai and Others

RESPONDENT

Date of Decision : 01-05-1941

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1941 Mad 831 : (1941) 54 LW 283 : (1941) 2 MLJ 497

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This appeal and the alternative revision petition arise out of an order allowing an application u/s 20 of the Madras Act IV of 1938 to stay proceedings in execution of a decree. The only question argued before us relates to the eligibility of the respondents, who were the petitioners before the lower Court, to be agriculturists having regard to Proviso C to Section 3 (2) of Act IV. It is now settled that no appeal lies from an order u/s 20, so that we have to consider whether, if there is an error, there are grounds to justify interference in revision u/s 115, Civil Procedure Code. It is common ground that the respondents will be excluded from the category of agriculturists if house No. 105 is deemed to be a house in respect of which the 1st respondent has been assessed to property tax. That house admittedly forms part of the property of the Chockapuraswami Mutt and is held by the 1st respondent under a usufructuary mortgage of the year 1932. The property tax in respect of this house is payable under the mortgage contract by the mortgagee and was so paid in the years immediately following the mortgage. It is also established that the first respondent applied to the Municipality for a vacancy remission in respect of this house and described himself as the owner thereof. For the purpose of Proviso C the important question is what happened during the two years immediately preceding 1st October, 1937. It is established that the Municipal property register in respect of these two years showed the Chockapuraswami Mutt as the owner of this house, but it seems clear that the demand notice for the tax was sent to the mortgagee, first respondent, in respect of the tax for these two years. He did not

pay the tax and a suit was filed by the Municipality against the first respondent alone, without impleading the manager of the Mutt until a later stage. That suit was pending at the time of the application to the lower Court. After the suit was filed, the taxes for the two relevant years appear to have been paid to the Municipality by the manager of the Mutt, who has deposed that he expected to recover the money from the mortgagee.

2. Now on these facts the lower Court has found that the Municipality did not actually treat the mortgagee as the owner for the purpose of the collection of the tax on house No. 105 and that there was no evidence that the mortgagee actually paid the property tax for the two relevant years. The latter finding is undoubtedly justified, although it may be that the money which the Mutt paid to the Municipality will eventually be recovered from him. The finding that the Municipality did not actually treat the mortgagee as owner seems to overlook the very wide definition of "owner" in Section 3 of the Madras District Municipalities Act. Under this Act the usufructuary mortgagee, being entitled to collect the rent, would presumably come within the definition of an owner. It has been argued before us that, even assuming that Proviso C to Section 3 (2) of Act IV of 1938 contemplates the assessment of a person as owner, it does not contemplate any form of ownership higher than that which suffices to render a person liable to property tax under the District Municipalities Act. We do not think it is necessary for the purpose of this case to decide whether Proviso C would have no application to the case of an assessment imposed upon a person who is not an owner, nor do we think it incumbent upon us to attempt any precise definition of what is meant by assessment under this Proviso. There are difficulties in the way of treating the entries in the assessment register as the sole criterion of assessment and there are also difficulties in the way of regarding the demand for the tax as the sole criterion of assessment. In the present case the register indicates that the assessee in respect of house No. 105 was the Mutt and the receipt shows that the Mutt actually paid the tax for previous years. The demand was almost certainly made in the first instance of the mortgagee who was liable to pay the tax not only under his contract, but also under the District Municipalities Act as an "owner". The question whether in such circumstances it can be said that the mortgagee has been assessed to this tax for those two years is one of considerable difficulty upon which the learned District Judge has come to a conclusion which cannot be described as perverse and certainly embodies no irregularity relating to jurisdiction. In such circumstances, since no appeal lies and our powers of interference are confined solely to powers of revision u/s 115 of the Civil Procedure Code, we are of opinion that, even assuming the learned Judge's view as to what constitutes assessment in such a case to be incorrect, there are no grounds which would justify interference in revision. The appeal and revision petition are therefore dismissed with costs. One advocate's fee only.