

(1917) 11 MAD CK 0046
In the Madras High Court

Vadlur Chinna Nagi Reddy

APPELLANT

Vs

Devineni Venkatramaniah and Another

RESPONDENT

Date of Decision : 21-11-1917

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Madras Revenue Recovery Act, 1864 — Section 59

Citation : AIR 1918 Mad 310 : 45 Ind. Cas. 653 : (1918) 7 LW 468

Hon'ble Judges : Seshagiri Aiyar, J; Napier, J

Bench : Division Bench

Judgement

1. The property in suit belonged to the 2nd defendant. He obtained a loan under the Agricultural Improvements Act from Government in 1897. That loan was payable by installments; while some of the installments still remained unpaid, he sold the land to the plaintiff in 1902; owing to the default in the payment of one of the installments, the land was put up to sale by the Government and was, purchased by the 1st defendant. Plaintiff sues for a declaration that the revenue sale is not binding on him. It is found that no notice of the sale which was held in 1910 was served on the 2nd defendant or the plaintiff; but that, when the 1st defendant took proceedings under Act II of 1864 to obtain possession, plaintiff who had notice of the application objected to the delivery on the ground that the sale was not binding on him; this was in November 1912. The suit was instituted on the 9th June 1913, more than six months after the order for possession.

2. The Subordinate Judge held that the sale was invalid, as there was no demand on the 2nd defendant to pay the instalment and also because no notice of the sale was served on him. He, however, held that as the proceedings to obtain possession were taken to the knowledge of the plaintiff more than 6 months before the suit, the suit was barred by limitation u/s 59 of Act II of 1864.

3. We think he has come to the right conclusion. The learned Vakild for the appellant contended that the sale was without jurisdiction, inasmuch as no notice of it was given to the plaintiff. In a very similar case it was held by a Full Bench

of this Court in Venkata v. Chngadu 12 M. 168. that failure to serve notice did not affect the jurisdiction of the Collector to sell the property. Under the Revenue Recovery Act there are some requisites which go to the root of the jurisdiction. As pointed out by Muthuswami Aiyar, J., in Venkata v. Chengadu 12 M. 168 : 4 Ind. Dec. 467, if there are no arrears, or if the land on which the arrear is due is not included in the holding of the alleged defaulter, any proceeding taken against such a person would be ultra vires. These are the essential conditions, compliance with which alone can invest the Collector with jurisdiction to take proceedings under the Act. If they are not complied with, the sale would be without jurisdiction. There are other conditions which the Act enjoins upon the Collector which are not conditions precedent. In conducting the sale certain formalities have to be observed. If they are not conformed to, the Collector, to borrow the language of Section 115 of the Code of Civil Procedure, will be acting illegally or irregularly in the exercise of his jurisdiction. No doubt such an illegal exercise of jurisdiction would vitiate the proceedings. But that is not enough to enable the plaintiff to obtain a declaration that the sale is not binding on him, if he does not sue within the period fixed by the Act. The proceedings taken being intra vires unless the suit is brought within 6 months to set the sale aside on the ground of irregularity or illegality, the plaintiff's suit will be barred.

4. We are unable to agree with Mr. Babu Rao that the sale was without jurisdiction, because of want of notice. The view taken by the Full Bench of this Court in Venkata v. Chengadu 12 M. 168 is against such contention and we are not prepared to hold that that case is opposed to any subsequent decision of this Court and of the Judicial Committee.

5. The case of Secretary of State v. Radha Kishore Manikya 38 Ind. Cas. 379 : 18 Bom. L.R. 1027 : 26 C.L.J. 425, which was strongly relied on, related to the sale of waste lands; instead of proclaiming that the waste lands were situated in the District A, it was proclaimed that they were in District B; and when subsequently lands in District A were sold under such a proclamation, it was held that the sale was without jurisdiction. That was a case where the Revenue Officer had no jurisdiction to act in respect of the lands in District A. He violated the observance of a condition precedent.

6. In Mysore Balakrishna Rao v. Secretary of State 30 Ind. Cas. 355. properties belonging to an individual were declared to be included in a reserved forest without any notice to him. Before taking action under the Act, the Government was bound to inform the person in possession that the property was going to be reserved. As regards the cases under the Rent Recovery Act in Dorasamy Pillai v. Muthusamy Mooppan 13 M.L.J. 479. and Zamindar of Ettayapuram v. Sankarappa Reddiar 27 M. 483, it is enough to say that in none of these was it held that the proceedings were without jurisdiction.

7. There is another point on which this appeal can be disposed of. Granting that the sale was invalid, the plaintiff was aware of the proceedings taken under the Act 6 months before the suit. It cannot be argued that the plaintiff was not

aggrieved by the step taken to obtain possession. It was a step taken under colour of the Act and was calculated to injuriously affect the plaintiff's rights. The fact that the sale was without notice will not enable the plaintiff to ignore subsequent proceedings taken to his knowledge as having been taken without jurisdiction. In this view the decisions in Purna Chandra Chatterjee v. Dinabandhu Mukerjee 34 C. 811 : 2 M.L.T. 371 and in Rameswar Singh v. Secretary of State 11 C.W.N. 356 are distinguishable from the present case. We think the decision of the Subordinate Judge is right and dismiss the second appeal with costs.