

(1946) 01 MAD CK 0017
In the Madras High Court

Vajapeyajula Venkateswarlu and Another	APPELLANT
Vs	
Ragadamilli Viraswami and Others	RESPONDENT

Date of Decision : 17-01-1946

Acts Referred:

Citation : (1947) ILR (Mad) 28 : (1946) 59 LW 207 : (1946) 1 MLJ 291

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The facts in this case are complicated, but they are not in dispute. The contest is with regard to their effect in law.

2. At all times material to the suit out of which the appeal arises the second defendant and defendants 3 to 8 jointly held as landholders within the

meaning of the Madras Estates Land Act certain lanka lands measuring 217.32 acres. It was agreed between these defendants that the second

defendant should have the right of managing the lands in faslis ending with an even number and that defendants 3; to 8 should have the same right in

faslis ending in an odd number. In fasli 1344 (1st July, 1934 to 30th June, 1935) the first plaintiff was the tenant of the lands and it being an even

fasli the second defendant was lawfully in charge of them. The first plaintiff failed to pay the rent due for that year and on the 2nd June, 1936, the

second defendant started proceedings u/s 112 of the Madras Estates Land Act, which he had then the right to do. The amount due by the first

plaintiff in respect of rent was Rs. 993-12-0. On the 30th June, 1937, that is the last day of fasli 1346 the first plaintiff gave notice u/s 149 to all the

colandholders of his resolve to relinquish his tenancy. The notice served upon the

second defendant was admittedly received by him on the 2nd

July, 1937. Within thirty days of the receipt of the notice served upon him u/s 112, the first plaintiff instituted a suit under Sub-section (2) contesting

the right of the second defendant to proceed with the sale. This suit was dismissed on the 19th April, 1937.

3. The third and fourth defendants had received notice u/s 112 of the second defendant's intention to sell and they also filed a suit under Sub-

section (2). They maintained that they had been unjustly included in the notice and that the rent due to the second defendant could be recovered by

proceeding against the holding and the defaulting ryot. As the result of their protest they were exonerated from the proceedings which were

continued merely against the first plaintiff as the ryot concerned. On the 3rd June, 1937, the Deputy Collector passed an order for sale u/s 116.

On the 10th August, 1937, the first plaintiff filed a memorandum saying that he had relinquished his interest in the holding u/s 149-and therefore he

was no longer interested in the proceedings. On the 18th August, August 1937, the Deputy Collector passed this order:

The petition for relinquishment is time-barred u/s 149, of the Estates Land Act. File with S.A. No. 2 of 1346.

S.A. No. 2 of 1346 was the application filed by the second defendant u/s 114 after the first plaintiff's suit u/s 112(2) had been dismissed. The

order is difficult to understand as there was no question of limitation. Learned Counsel have not been able to throw any light upon the matter.

4. On the 20th August, 1937, the third defendant, on behalf of himself and defendants 4 to 8, filed an application purporting to be made under

Order XXI, Rule 58 and Section 151 of the CPC asking that the sale be stopped and all proceedings dropped. The basis of this application was

that as the result of the first plaintiff's relinquishment of his tenancy there had been a merger within the meaning of Section 8(1). Pending the hearing

of the application the sale was stayed. In these proceedings the first plaintiff filed a counter-affidavit saying that he had unnecessarily been made a

party because he had surrendered his tenancy. By an order dated the 5th October, 1937, the Deputy Collector dismissed the third defendant's

application and cancelled the stay order. By an order dated the 29th October, 1937, he ordered the selling officer to sell the holding before the

24th December, 1937. On the 1st November, 1937, the selling officer fixed the sale for the 23rd December, 1937.

5. On the 13 th November, 1937, the third defendant filed an application asking the Collector to revise the Deputy Collector's Order of the 5th

October, 1937. The Collector dismissed this application on the 16th December, 1937 and discharged an interim stay order which he had passed.

On the 27th December, 1937 the Collector's order was communicated to the selling officer, who thereupon fixed the sale for the 18th January,

1938. On the 15th January, 1938, the first plaintiff asked the Deputy Collector to stay the sale on the ground that the proceedings were invalid

because there was no pattadar. This was dismissed by an order passed the next day.

6. On the 14th December, 1937, that is, two days before the Collector dismissed his revision petition, the third defendant let Ramineedi Ranga

Rao, the father of the second plaintiff, into possession. This was during fasli 1347 when defendants 3, to 8 were in management of the property.

The fact that Ranga Rao had been let into possession was not known to the second defendant until the 22nd February, 1938.

7. The sale was held on the 18th January, 1938 and the second defendant purchaseo the kudiwaram interest in the property. On the 22nd

February, 1938, Ranga Rad applied to the Deputy Collector for an order setting saide the sale on the ground of irregularities in its conduct, but the

petition was dismissed by an order passed on the 30th June, 1938. On the 31st October, 1938, the Collector put the second defendant in

possession whereupon the second defendant granted a tenancy of the lands to the first defendant.

8. The present suit was not filed until the 6th April, 1942. In the meantime Ranga Rao had died and his interest had devolved upon his son the

second plaintiff. The two plaintiffs asked for a decree declaring that they were entitled to the kudiwaram right in the lands, for possession and for

mesne profits. The Subordinate Judge dismissed the suit as regards the first plaintiff but granted the second plaintiff a decree declaring him to be

entitled to the kudiwaram right and to possession of the property. His reasons for doing so were (1) The sale of the holding was invalid by reason

of the relinquishment of the tenancy by the first plaintiff; and (2) there had been material irregularities in the conduct of the sale. The Subordinate

Judge rejected a plea advanced by the first and second defendants that the suit was barred by the law of limitation. The first and second defendants have appealed.

9. By virtue of Section 149 every ryot has the right of relinquishing his holding or any part of it with effect from the end of a revenue year. The

relinquishment must be by a notice in writing signed by him. His right to relinquish is absolute, subject to his compliance with the formalities required

by the section and the right of the landholder to institute a suit before the Collector for indemnity against loss of rent, for the revenue year next

following the date of the relinquishment, unless the tenant had given notice of his intention to relinquish before the 1st April. Section 187(1)(I)

expressly states that the right of relinquishment cannot be taken away by a contract between the landholder and the ryot. Therefore the first

plaintiff undoubtedly acted within his rights when on the 30th June, 1937, the last day of the revenue year, he gave notice of relinquishment to the

proprietors of the land. Admittedly the notice complied with all the requirements of Section 149. That being the position, the second defendant had

no right to apply for the sale of the holding. The kudiwaram right of the first plaintiff had vested in the second defendant and defendants 3 to 8. In

other words, there was a merger within the meaning of Section 8. By reason of the relinquishment the second defendant could, of course, not be

deprived of his right to recover the rent for fasli 1344, but his remedy was by way of suit u/s 77 and not otherwise. As the kudiwaram right had

vested in the landholders, there could be no charge in favour of them or any of them. In these circumstances the sale was invalid and therefore

could not affect the rights of the second plaintiff who at no stage was made a party to the proceedings instituted by the second defendant for the

sale of the kudiwaram right.

10. In view of this finding it is not necessary for us to consider whether the Subordinate Judge was right in holding that the sale was also vitiated by

irregularities in its conduct. It is, however, necessary to deal with the question of limitation. The argument for the appellants here is that the suit is

governed by Article 12 (b) of the Limitation Act, which provides inter alia that a suit to set aside a sale in pursuance of a decree or order of a

Collector or other officer of revenue shall be brought within one year from the

date when the sale is confirmed or would otherwise have become

final and conclusive had no suit been brought. Sir Alladi Krishnaswami Ayyar, on behalf of the appellants had relied on the judgment in

Kamulammal and Another Vs. N. Chokkalingam Asari, . It was there held by Phillips and Venkatasubba Rao, JJ., that a suit to set aside a revenue

sale after one year after the expiration of thirty days from the date of sale was barred under Article 12 (b) of the Limitation Act.

11. In Subbayya: v. Kristayya (1926) 52 M.L.J. 390, Devadoss, J., in Kootoorlingam Pillai and Others Vs. Sennappa Reddiar and Others, ,

Ramesam, J. and in Sri Alluri Satyanarayana and Another Vs. Ramineedi Rayalamma and Another, , Abdur Rahman, J., said in effect that a sale

held in accordance with the procedure prescribed in Sections 111 to 131 does not fall within Article 12 (b) because it is not held in pursuance of an

order of the Collector, whose function was merely to direct the selling officer to conduct the sales. Devadoss, J., did not consider Kamulammal

and Another Vs. N. Chokkalingam Asari, , but Ramesam, J., did. Abdur Rahman, J., considered that Kamulammal and Another Vs. N.

Chokkalingam Asari, had been distinguished by Ramesam, J. in Kootoorlingam Pillai v. Sennappa Reddiar (1926) 52 M.L.J. 390. This statement

is erroneous. Ramesam, J made no attempt to distinguish Kamulammal and Another Vs. N. Chokkalingam Asari, from the case before him.

Although it was quite unnecessary for him to do so for the purpose of deciding the case before him Ramesam, J., intimated that he was not

prepared to accept the judgment in Kamulammal and Another Vs. N. Chokkalingam Asari,

12. We are not called upon to discuss the conflict because we are of the opinion that Article 12 (b) cannot be applied in this case for the reasons

given in Kadar Hussain v. Hussain Saheb (1896) 7 M.L.J. 52 : ILR 20 Mad. 118, Jwala Sahai v. Masiat Khan ILR (1904) All. 346 and (1935)

AWR 1326 (Privy Council) . If we had been of the opinion that the suit fell within Article 12 (b) we should have followed Kamulammal and

Another Vs. N. Chokkalingam Asari, , as being binding on us even if Section 116 of the Madras Estates Land Act had remained unamended. The

section was amended in 1934 and the amendment has negated the opinion expressed by Devadoss, Ramesam and Abdur Rahman, JJ., because

Section 116 now expressly directs the Collector to order the sale.

13. In *Kadar Hussain v. Hussain Saheb* (1896) 7 M.L.J. 52 : ILR 20 Mad. 118, a Full Bench of this Court held that Article 12 (b) was not

applicable to a case in which dispossession was the cause of action and in which the plaintiff was not a party to, or bound by the sale. The same

view was expressed by the Allahabad High Court in *Jwala Sahai v. Masiat Khan* ILR (1904) All. 346. In that case Immovable property was sold

as the property of persons to whom it did not belong and the person to whom it did belong had no notice of the sale. It was held that the true

owner was competent to treat the sale as a nullity and to bring his suit for recovery of possession at any time within twelve years from the date

when he lost possession. This decision received express approval from the Privy Council in (1935) AWR 1326 (Privy Council) .

14. The present suit was not one for setting aside the sale. The suit was for the recovery of possession of property from the first defendant on the

ground that the second plaintiff had been wrongly dispossessed. As we have already pointed out, he was let into possession by defendants 3 to 8

when they were in lawful management of the property. He was dispossessed on the 31st October, 1938, when the second defendant was given

possession by the Revenue authorities by reason of his purchase at the sale held on the 18th January, 1938. The sale was illegal and therefore the

second plaintiff was wrongly dispossessed. As the suit was filed within four years of the dispossession it was well within time.

15. The appeal is dismissed with costs in favour of the second plaintiff (the second respondent).

16. The plaintiffs have each filed a memorandum of cross-objections. These are not pressed and are dismissed with costs in favour of the

appellants.