

(1941) 08 MAD CK 0022
In the Madras High Court

Vallur China Kondayya (deceased) and Others	APPELLANT
Vs	
Sidavarapu Ramalinga Reddi (deceased) and Others	RESPONDENT

Date of Decision : 14-08-1941

Acts Referred:

Citation : AIR 1942 Mad 271 : (1942) 55 LW 33 : (1941) 2 MLJ 1060

Hon'ble Judges : Wadsworth, J;Patanjali Sastri, J

Bench : Full Bench

Judgement

Wadsworth, J.—The only question arising in this appeal is one u/s 23 of the Madras Act IV of 1938. The first respondent obtained a decree

against the appellants in March, 1936 and in execution of that decree a sale of the appellants property was held on 22nd November, 1937. The

property was purchased by the decree-holder who on 18th February, 1938, got possession of one item with which we are now concerned. Act

IV of 1938 came into force on the 22nd March, 1938 and thereafter the judgment-debtors filed an application under the Act to set aside the sale

and to scale down the decree. The sale was set aside on the 7th November, 1938 and the decree was scaled down. The judgment-debtors then

applied for re-delivery of the property and claimed that the profits on the land should be adjusted towards the decree as scaled down. On

objection they gave up this claim to profits, stating that they would prosecute it in separate proceedings. The decree-holder then sought to execute

the amended decree by the sale of the same property once more. By way of objection to this execution petition the judgment-debtors asked the

Court to give credit to the amount of the profits enjoyed by the decree-holder during the interval between the delivery in February, 1938 and the

re-delivery and asked that these profits be treated as realizations towards the revised decree. This application has been rejected and hence this appeal.

2. It will be quite clear that the claim to an adjustment of the profits towards the decree cannot be entertained unless it is provided by the terms of

Act IV of 1938 or by necessary implication therefrom. The sale held in execution of the unamended decree was a perfectly legal sale and the

possession of the decree-holder as purchaser in execution of that decree was rightful possession. There can be no question, therefore, of restitution

under the Civil Procedure Code, either by the express provisions of Section 144 or on the general principle that the Court will not permit injustice

and will not permit a decree-holder to retain profits to which he was not lawfully entitled. The argument is however that the last words of the first

clause of Section 23 of Act IV necessarily imply that a judgment-debtor shall have a right to the profits on the land during the interval between the

delivery under the sale and the re-delivery after its cancellation. The words are, ""and thereupon the sale shall be deemed not to have taken place at

all."" It is argued that, if the sale is deemed not to have taken place at all, then the purchaser was in possession of properties to which he must be

deemed not to have been entitled and was enjoying profits which must be deemed to have been properties belonging to the judgment-debtor. The

argument is reinforced by the further contention that, when the sale is set aside, the decree though amended, is revived and interest thereon will run

up to the date on which further execution takes place and the decree is satisfied, and it is contended that it is not fair that the decree-holder should

get both interest on his decree and the profits on the land of which he should be deemed not to have been the purchaser. This argument has a

certain plausibility when the decree-holder is the purchaser but it cannot apply when the purchaser is a stranger. If a stranger buys lands in

execution of a decree which is subsequently set aside u/s 23 at the instance of an agriculturist, the purchaser gets no interest on the money which he

has paid. All he gets is a refund of the actual sum and there is no equitable reason for requiring the purchaser to forego the profits of the land which

has been taken from him and in lieu of which he gets the bare sum which he has paid without interest thereon. Although the words ""thereupon the

sale shall be deemed not to have taken place at all"" might be read as having the consequence that the person who purchases the land would be

deemed to have had no right thereto, that is not the only meaning which those words could have had. It is no doubt true that, if these last words

had been omitted, any third party purchaser from the Court auction purchaser would lose his title when the latter's sale was set aside. But the

Legislature may well have thought it desirable to make this matter clear and this may well have been the reason for putting in the words ""thereupon

the sale shall be deemed not to have taken place at all"". It is pointed out that in the analogous section relating to sales of movable properties,

Section 22, though there is no cancellation of the sale, that which the decree-holder is required to refund is merely the excess over his decree as

scaled down and not any interest thereon. It would therefore not appear to have been the intention of the Legislature to deprive the decree-holder-

purchaser of the profits which his purchase has earned in the interval between the original execution of the decree and the cancellation of the sale.

3. A more formidable argument against the appellants is derived from Section 24 which provides for the consequences of the setting aside of a sale

u/s 23. This section provides that a purchaser shall be entitled to an order for repayment of any purchase money paid by him against the person to

whom it has been paid. It is silent on the subject of interest and it is silent on the subject of profits. The natural inference is that the purchaser gets

back his money without interest and that he does not incur any liability for profits. As we have often had occasion to point out, Act IV of 1938 is

an expropriatory measure and the process of expropriation should not proceed beyond that which is laid down either by the express language of

the Act or by necessary implication therefrom. There is no express provision that the judgment-debtor should be entitled to the profits on the land

the sale of which is set aside and it does not seem to me that any such provision can be read into the Act by necessary implication from its terms.

4. A further objection has been raised that even if the appellants were entitled to claim profits as against the decree-holder, that claim would have

to be agitated in a separate proceeding and could not be put forward as an objection to execution, the profits not being ascertained as yet and, by

the very nature of the claim, the profits not being a claim arising in execution of the decree, but a claim based on the statutory assumption that the

sale in execution has not taken place at all, it would appear that this objection is also valid.

5. In the result, therefore, the appeal is dismissed with costs.

Patanjali Sastri, J.

6. I own to some doubt on the question whether a purchaser of immovable property whose sale is set aside u/s 23 of Madras Act IV of 1938 is

accountable for the profits received by him before the sale is set aside. The last words of the first paragraph of Section 23, namely, ""thereupon the

sale shall be deemed not to have taken place at all"", would prima facie seem to import that the purchaser obtained no title at any time to the

property and that his possession of it from the start was without any right. The consequence of this, it is arguable, must be that he is accountable for

the profits received by him from the property of which he was in possession without any right or title. On the other hand, there is force in the

argument for the respondents, that, when the Legislature made express provision in Section 24 for the consequences to follow upon a sale being

set aside u/s 23, it has omitted to provide expressly for the payment by the purchaser of the net profits received by him. The question is by no

means free from difficulty but having regard to the considerations adverted to in the judgment of my learned brother I agree, on the whole, though

not without some hesitation, with the view expressed by him.