
(1927) 08 MAD CK 0028
In the Madras High Court

Vankayala Subbarayudu

APPELLANT

Vs

Kolluri Venkataratnam

RESPONDENT

Date of Decision : 05-08-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 42

Citation : AIR 1928 Mad 1074 : (1928) ILR (Mad) 632 : 110 Ind. Cas. 136 :
(1928) 28 LW 477 : (1928) 55 MLJ 314

Hon'ble Judges : Srinivasa Aiyangar, J; Reilly, J

Bench : Full Bench

Judgement

Srinivasa Aiyangar, J.—The only point raised and argued in this Second Appeal is one of some difficulty, but after carefully considering the

point and the arguments advanced by the learned gentlemen on both sides I have come to the conclusion ultimately without any hesitation that the

appeal should be dismissed.

2. The 4th defendant is the appellant in this Court. The plaintiff instituted the action from which this appeal has arisen as mortgagee for an ordinary

mortgage decree. Defendants 1 to 3 did not defend the suit and allowed the case to proceed ex parte. The defence that was set up by the 4th

defendant was that Item No. 3 in the plaint, with which alone we are concerned in this Second Appeal, was part of an estate governed by the

Estates Land Act and that for the arrears of rent due in respect thereof the landholder had obtained a decree in a Revenue Court, had it transferred

to a Civil Court and brought the holding for sale and that he (the 4th defendant) became the purchaser. His contention is that on such sale

according to the true construction of the various sections in the Estates Land Act the purchase by him has been free of the encumbrance created by

the mortgage in favour of the plaintiff. Both the lower Courts found against the 4th defendant-appellant on this contention and gave a decree to the plaintiff and hence this Second Appeal by him.

3. Mr. Lakshmana, the learned vakil for the appellant, has argued strenuously before us that, according to the proper construction of the various sections, to which I shall presently advert, in the Estates Land Act, there could be no difference with regard to the effect between sales held by Revenue Courts and sales held by Civil Courts. The material sections are these. Section 5 is the section which creates a charge in favour of the landholder for the rent payable in respect of the holding. u/s 77, the landholder is authorised for arrears of rent to institute a suit or distrain certain kinds of property, such as moveable property. Section 111 and the following sections under the heading of " Sales of holding" enable the landholder by following the prescribed procedure to effect a sale of the holding for the arrears of rent. Section 125 prescribes that, when a holding is sold for arrears due in respect thereof, the sale shall be free of all encumbrances, and Section 132 extends the provisions of Chapter VI of the Act as far as may be to execution by Revenue Courts. Section 201 in the Act prescribes that a decree or order for payment of money passed by a Revenue Court may be transferred only to a Civil Court for execution. These are the only relevant provisions which have to be considered with reference to the argument advanced.

4. In this case there is no doubt that the land was part of an estate and therefore governed by the provisions of the Estates Land Act. For the purpose of this argument it may be assumed, because it has not been questioned on either side, that the decree obtained by the landholder in the Revenue Court was in respect of arrears of rent due for the very holding in suit. Some time" after this decree was obtained in the Revenue Court, the decree would appear to have been transferred to the District Munsif's Court at Amalapur for execution and it was at the sale held by that Court that Item No. 3 was purchased by the 4th defendant. First, taking into consideration Section 125, what it says is that When a holding or part of a holding is sold for arrears due in respect thereof, the purchaser shall take, subject to any right or interest which the ryot has created therein with the landholder's permission in writing" registered and

subject also to any encumbrances created before the passing of this Act.

5. It may be observed before proceeding further that this is a somewhat curiously worded section. It does not expressly state that the sale shall be regarded as free of other encumbrances not referred to in the section. However, that appears to be the natural implication in the section and in any case that is the manner in which the section has been construed and no question had been raised before us with regard to that construction. The expression in that section being, ""When a holding is sold for arrears due in respect thereof,"" before the immunity referred to in the section can be claimed or be regarded as attracted, it must be shown that the sale was for arrears due. If that expression had not been used elsewhere in the Act, it may be permissible to regard any sale which come to be effected, whether by a Revenue Court or by a Civil Court, in respect of an obligation which ultimately arose with reference to arrears of rent, as a sale for arrears of rent. But there is in the Act, under the sub-division entitled ""Sale of ryots" holding,"" Sections 111, 112 and the following where the landholder is authorised by following the prescribed procedure to bring the holding to sale directly for non-payment of rent due or for arrears of rent in respect of it. Primarily therefore when in Section 125 the legislature speaks of sales of holding for arrears of rent, it must be taken that the reference in that section is only to the sale of the ryots" holding as prescribed in the Act in Section 111 and the following Sections. A sale, albeit in execution of a decree obtained in a Revenue Court, cannot strictly or properly be stated to be a sale for arrears of rent. In legal parlance it would be correctly described as a sale in execution of a decree of a Revenue Court, or if the decree was made by a Civil Court, in execution of such a decree. If on the other hand the legislature had intended that though the sale may be in execution of a decree the same result should follow, namely, that the sale would be regarded as free from certain encumbrances created by the ryot, the legislature would have had no difficulty in making its meaning clear by use of apt language. They had merely to say:

Any sale for arrears of rent or in execution of decrees obtained for arrears of rent.

6. But this is not the language employed and therefore when, in Section 125, the legislature speaks of sales for arrears of rent and sales of holding

at the instance of the landholder for arrears of rent specifically provided for by a direct procedure, the proper construction, it seems to me, would be to hold that the immunity provided in Section 125 arises only when the sale is under that sub-division, namely, under Sections 111, 112 and so on. Nonpayment of the arrears due is the breach of the obligation on which, according to the relative sections the penalty follows, namely, the liability of the holding to be sold. But in the case of execution of a decree, the breach of obligation is not the non-payment of arrears but the non-satisfaction of the decree. Thus it follows that sale for arrears of rent is not the same thing as sale in execution of a decree. Then if in the Act there were no section like Section 132 extending the provisions of the chapter to sales by the Revenue Courts, it would follow that, even when the holding is brought to sale in execution of a decree by a Revenue Court the immunity or the freedom from encumbrance provided in Section 125 cannot be secured for the purchaser. When, in Section 132 we find that the provisions of Chapter VI are, so far as they may be, extended only to execution by Revenue Courts, thereby deliberately excluding execution by Civil Courts, it cannot be a proper consideration to hold that the provision applies to sales by all Courts including Civil Courts. At first I experienced no small difficulty in finding out what possible reason the legislature might have had in excluding any reference to Civil Courts from Section 132, what reason the legislature could have had for applying the provisions of Chapter VI only to sales by Revenue Courts. But it must be borne in mind that in Section 201 the provision is that, when decrees for money are required to be transferred they can only be transferred to Civil Courts. If it is not a decree for money it follows that the Revenue Court itself might be in a position to carry out execution of the decree of the Revenue Court. When, however, a decree-holder seeks a transfer of the decree to a Civil Court, we must take it that he wants it only because he cannot get the Revenue Court to execute it in the manner in which he wishes the Civil Court to execute it - it may be in respect of the person of the judgment-debtor who is not within the jurisdiction of the Revenue Court or it may be in respect of the moveable or Immovable property of the judgment-debtor not within the jurisdiction of the Revenue Court. If, however, it was the object of the decree-holder to proceed to recover the amount of the decree by the sale of the very holding, for the non-

payment of arrears of rent due in respect of which the decree was obtained, there can be no reason whatever why he should not obtain that relief

in the Revenue Court itself. It was probably having reference to this that the legislature prescribed that, when decrees for money are sought to be

transferred they could only be transferred to Civil Courts. The necessary implication from it would appear to be that, when the decrees are so

transferred to Civil Courts they are intended to be executed merely as money decrees. Again, if through the instrumentality of the Revenue Court

itself the decree-holder could have obtained the relief, by way of sale of the ryot's holding, there was no reason why he should get the decree

transferred to the Civil Court; and whenever he does so it may, therefore, be taken that such transfer was obtained by him merely because the

manner in which he wished the decree to be executed was such that the Revenue Court which passed the decree could not grant such execution

and such execution could be only granted by the Civil Court. It seems to me, therefore, possible that that was the reason why in Section 132 the

legislature while extending the provisions of the chapter to sales by Revenue Courts did not extend them to sales by Civil Courts.

7. The learned vakil for the appellant has drawn our attention to several cases in connection with his argument. *Suramma v. Suriyanarayana*

Jagapatkiram ILR (1918) M. 114 : M.L.J. 443 was referred to and relied upon. That was a case in which the property was sold by a Revenue

Court in execution and *Phillips and Kumaraswami Sastriar, JJ.*, held that on such sale the property passed free of all encumbrances according to

Section 125 of the Act. In *Sree Rajah Bollapragada Venkata Lakshamma Garu Vs. Menda Seetayya and Another*, which was a case somewhat

like the present, there was a transfer of a decree passed by a Revenue Court to a Civil Court and the question arose whether on such sale under

the provisions of Section 125 of the Act the sale was free of encumbrances. The learned Judges, *Sadasiva Aiyar and Spencer, JJ.*, held that, when

the sale is by the Civil Court the provision would not apply. In a later case *Nagalla Kotayya Vs. Koganti Kotappa and Others*, *Phillips, J.*, sitting

as a single Judge, has held that there is no reason why the legislature should be deemed to have made any difference between the sales by Revenue

Courts and by Civil Courts. But that question did not arise for decision in that case because the case before the learned Judge was one for

contribution and what was claimed was that on payment by one of the co-sharers of the rent in respect of the land for which the landholder had a

charge, the person making payment obtains by subrogation a similar charge. The decision of that question did not necessarily involve the

determination of the question whether or not the sale by a Civil Court should be regarded as free of encumbrances or not. The case of Sree Rajah

Bollapragada Venkata Lakshamma Garu Vs. Menda Seetayya and Another, is direct authority in favour of the respondent in this case. Mr.

Lakshman for the appellant really argued that the decision of the learned Judges in that case is wrong and tried to persuade us to take a contrary

view and if necessary to refer the case to a Full Bench. We are not satisfied that that judgment is wrong. On the other hand, having regard to the

various sections to which we have adverted and also what may be supposed to be the intention of the legislature in making the various provisions, it

seems to us that the opinion of the learned Judges in that case is right. It is not correct to say, as Phillips, J., seems to have thought in the case in

Nagalla Kotayya Vs. Koganti Kotappa and Others, that the opinion of the learned Judges was a mere obiter dictum. It was really necessary for

the purpose of the decision of the case; at any rate Spencer, J., based his decision on no other ground. Mr. Lakshman also referred to Section

42 of the Civil Procedure Code, but we do not see the bearing that section has on the question before us. If a decree, when transferred to a Civil

Court, should, according to the provisions of that section, be executed as if it were a decree passed by itself, then it comes to this, that there is only

a decree for money which must be executed like all other decrees for money passed by Civil Courts only by the sale of the right, title and interest

of the judgment-debtor at the time of the attachment. It is, therefore, unnecessary to refer to or discuss any of the cases cited with regard to this

point.

8. In the result, I am satisfied that both the lower Courts are correct in the conclusion they arrived at. The second appeal is, therefore, dismissed

with costs.

Reilly, J.,

9. Defendant 4, who is the appellant before us, bought a ryot's holding at a Court sale held in a District Munsif's Court in execution of a money

decree of a Revenue Court for arrears of rent. He contends that his purchase was u/s 125 of the Madras Estates Land Act free from

encumbrances and in particular free from the mortgage on which the plaintiff sues. Section 125 of that Act provides in effect, though in a rather

back-handed way, that, when a ryot's holding is sold for arrears in respect of it, the sale is free from encumbrances with certain specified

exceptions. I agree that "'sold for arrears'" in that section means sold under Sections 111 to 124 of the Act. But the provisions of Section 125 and

the consequent limited freedom from encumbrances have been made applicable by Section 132 of the Act to the execution by Revenue Courts of

decrees for arrears of rent. In Panangipalli Suranna Vs. Sree Raja Datta Venkata Suryanarayana Jagapathiraju Bahadur Garu and Others, it was

decided therefore that a sale in a Revenue Court in execution of a decree for arrears of rent made by that Court was free from encumbrances, and

in that respect the decision was followed by Sadasiva Aiyar, J., in Sree Rajah Bollapragada Venkata Lakshamma Garu Vs. Menda Seetayya

and Another, But there is nothing in the Act to make the provisions of Section 125 applicable even to that kind of decree when it is executed in a

Civil Court and, as was decided in Sree Rajah Bollapragada Venkata Lakshamma Garu Vs. Menda Seetayya and Another, a sale in execution

of a decree so transferred to a District Munsif's Court is not under the provisions of the Act free from encumbrances. I agree, therefore, that

defendant 4's appeal must fail. But I may add that I do not in any way dissent from the actual decision of Phillips, J., in Nagalla Kotayya Vs.

Koganti Kotappa and Others, to the effect that the charge for rent given by Section 5 of the Act can, in proper circumstances, be enforced by a

suit in a Civil Court.