
(1933) 04 MAD CK 0002
In the Madras High Court

Velayuda Mudali and Another	APPELLANT
Vs	
Co-operative Rural Credit Society and Others	RESPONDENT

Date of Decision : 26-04-1933

Acts Referred:

Transfer of Property Act, 1882 — Section 52

Citation : AIR 1934 Mad 40 : (1934) ILR (Mad) 426

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—The plaintiff is the appellant. The suit relates to two items of property. The A schedule property belongs to one Kuppuswami

Padayaehi and was sold to the appellant and two others on 9th December 1922 (Ex. C). The other two vendees sold their share to the plaintiff on

19th December 1923 (Ex. D). The B schedule property belonging to one Thangavelu Padayachi was sold to the plaintiff on 27th June 1923 (Ex.

E). The properties were sold as free of encumbrance. But plaintiff found that they were both subject to a mortgage on 17th August 1917 for Rs.

460 in favour of defendant 1, the Co-operative Rural Credit Society of Ulakottai Village, Default having been made under the mortgage to the Co-

operative Society, it proceeded by C.C.S. 1 of 1922 to obtain an award from the Assistant Registrar of Co operative Societies. An award was

passed on 31st August 1922 directing the mortgagor to pay the amount. It was filed in Court with an execution petition, E.P. No. 1650 of 1922,

on 17th November 1922. Under this execution petition the properties were sold on 21st November 1923, and the Society purchased the

hypotheca. The sale was confirmed on 22nd February 1924. Plaintiff wanted to redeem the properties but his-right was denied and it was said that

his vendor's right to redeem had disappeared. The sale to the plaintiff was subsequent to the filing of the execution-petition on 17th November

1922, and the main question at issue is whether his purchase was pendente lite or not. Respondent 2 is the subsequent purchaser from the Society

and his defence is the same as that of the Society. The trial Court held that the proceedings under Ex. 1 before the Registrar were proceedings

before a Court and therefore attracted the provisions of Section 52, T.P. Act. On appeal the Subordinate Judge held that the proceedings before

the Registrar were not proceedings before a Court and therefore Section 52 does not apply, but he held that the execution proceedings on the

award were proceedings u/s 52 and therefore the plaintiff's purchase was pendente lite. Against this decision this second appeal has been filed.

2. It may be more convenient first to discuss the matter from the respondents' standpoint since they contend that the trial Court was correct in

considering that the proceedings before the Registrar were proceedings before a Court. If that is made out, except for a general argument, which

was not raised at all in the Courts below, and to which I shall allude; later on, it is clear that the plaintiffs' purchase was pendente lite. There is one

direct decision of this Court that the Registrar of Co-operative Societies is a Court for purposes of Section 195, Criminal P.C: In re Subbiah

Beddi AIR 1930 Mad 869. It, is a decision, no doubt, of a Single Judge and is confined to Section 195, Criminal P. C, but it is on the exact point,

and there is no decision to the contrary by this Court. In Nanda Lal Ganguli v. Khatra Mohan Ghose AIR 1918 Cal 932 it was held that a tribunal

constituted by the Calcutta Improvement Act is a Court within the meaning of Section 195, Criminal P. C. In Queen-Empress v. Munda Shetti

(1901) 24 Mad 121, it was held that a Tahsildar inquiring into revenue registry is a revenue Court, and in In re Nataraja Iyer (1913) 36 Mad 72

held that a Divisional Officer hearing appeals under the Income Tax Act, is a Court. In Gopi Nath and Another Vs. Ram Nath, it was remarked

that the Registrar of Cooperative Societies or the arbitrators appointed by him are given the powers of a civil Court for the purposes of summoning

witnesses and that it is laid down that their award shall be enforceable by a civil Court in the same manner as if it were a decree passed by such a

Court.

3. For the appellant it is pointed out that an Official Assignee is not a Court, *Beard-sell & Co. v. Abdul Gunni Sahib* AIR 1914 Mad 474, nor is a

Registrar of Assurances in registering a will a Court for the purpose of rendering a statement made by an opposing party in an objection petition, a

statement made on a privileged occasion, *Krisknammal v. Krishna Iyengar* (1912) 12 Cr LJ 508, of this Court), that under the amended Section

195, Criminal P.C, a Registrar of Assurances is not a Court for purposes of that section, that a Revenue Officer when exercising jurisdiction under

Ch. 11, Estates Land Act, in relation to settlement of rents is not a Court, *Raja of Mandasa v. Jagannayakalu* AIR 1932 Mad 612, that a District

Registrar is also not a Court for the purpose of Section 622, Civil P.C., 1882, as the High Court has no power to reverse his order under that

section, *Manavala Goundan v. Kumarappa Beddi* (1907) 30 Mad 326, and that the Chief Judge of a Small Cause Court hearing objections on an

Election Petition acts as a *persona designata* and is not a Court, *O. A. O. K. Lakshmanan Chettiar Vs. J.S. Kannappar and Others*, .

4. None of the above instances cited for the appellants deals, with the Registrar of Co-operative Societies acting under Rule 14 of the rules framed

under the Cooperative Societies Act. Several points with regard to his position may be noted. The first is that he is not an arbitrator in the sense in

which that word is understood under the Arbitration Act, or in Schedule 2, Civil P.C., and therefore Section 3, Evidence Act, which excludes

arbitration from the definitions of Court, is not of much assistance. The essential characteristic of an arbitrator is that the matter is referred to him by

consent of both parties. But under Rule 14 any one party may make a reference to the Registrar and on receipt of such reference he is bound to

dispose of the case. He can no doubt refer it to an "arbitrator" appointed by him or to several arbitrators, (the word is used in a special sense

here). But his position in this matter is that of a Court to whose decision one party can compel the other party to submit. Then it has to be noticed

that the whole procedure under Rule 14 appears to be devised as a short cut, by which the Registrar takes the place of the Court, decides a matter

which would otherwise have been referred to it, and passes an award which becomes a decree of a civil Court having jurisdiction over the subject

matter of the decision when that Court is asked to enforce it. Unlike revenue officers appointed to fix rents there is no provision that the Registrar

can disregard contracts between the parties or import his own knowledge into the matter. This makes his position entirely different from that of

such an officer as is dealt with in the Full Bench decision, *Rajah of Mandasa v. Jagannayakalu* AIR 1932 Mad 612. It is argued that if he were a

Court he would be subject to the jurisdiction of the High Court beyond that which it can exercise by a writ of certiorari. But the fact that the High

Court has not any other jurisdiction over him would not, in the light of the rulings in *Queen-Empress v. Munda Shetti* (1901) 24 Mad 121 and *In re*

Nataraja Iyer (1901) 24 Mad 121 prevent his being a Court. Neither of the officers in those two cases is subject to direct control by the High

Court. On the whole following the only actual reported decision on the point, of this Court, namely *In re Subbiah Reddi* (1901) 24 Mad 121, I

hold that the Registrar is a Court acting in these circumstances. If that is so, it is clear that the plaintiffs' purchase was made *pendente lite*.

5. Even if that view is not correct, I agree with the lower appellate Court that when once the award has been put before a competent civil Court in

execution, as in this case, and the Court directs the sale of the mortgaged property, any purchase during such proceedings is made *pendente lite*.

No doubt it is true that Section 141, Civil P.C., does not apply to execution proceedings but I am not convinced that this argument applies to

Section 52, T.P. Act. Section 52, T.P. Act, is a general rule of *lis pendens* to avoid multiplicity of suits and the principle applies whether Section

52 is in terms applicable or not. It has been held that even sales *in invitum* would fall under it and the principle has been applied even in the case of

moveables so that it is a section of very wide application. It was argued for the appellant that in a mortgage suit the *lis* commences with the suit but

that while ordinarily the *lis* terminates with the decree, there is an exception in a mortgage suit if the decree directs the sale of the property. That

position however cannot be maintained because the *lis* may also continue in a suit for specific performance after decree. *Matti hall Pal v. Preo Nath*

Mitra (1909) 3 IC 696. In *Ramaswami Ayyangar v. Govinda Iyer* AIR 1917 Mad 128 it was laid down that in a mortgage suit the basis of the

doctrine of *lis pendens* after the decree is the fact that the property is directed to be sold and not the fact that applications are presented to enforce

the terms of the decree. Therefore the argument that if the Registrar is not a Court the award which he passes can never become a decree of the

executing Court cannot I think be sustained. Rule 14(5b) of the rules framed under the Co-operative Societies Act, 1912 says that on application to the civil Court having jurisdiction over the subject matter of the decision or award, that Court may enforce that decision or award as if it were a decree of the Court. In the case reported in Gladstone Wyllie and Co. Vs. Joosub Peer Mahomed and Co., it was held that for the purpose of recognising the transfer under Order 21, Rule 16, Civil P.C., it was the Court in which execution was taken that must be deemed to be the Court which passed the decree.

6. In *Krishnaji Shridhar v. Mahadeo Sakharam* AIR 1922 Bom 377 it was held that an award of a co-operative officer filed for execution in one

Court can be transferred by that Court to another Court inasmuch as that Court could execute it as it had passed it. *Ahniad Yar v. Go-operative*

Credit Society, AIR 1926 Lah 547 is a decision of considerable importance with regard to another argument raised There it was held that a Court

executing an award under the Co-operative Societies Act has no power to do anything except to execute the award as if it were a decree of the

executing Court, and that an order refusing to do so was appealable. On the other side was quoted *Brijnath v. Ahmed Musaji Saleji* (1913) 40 Cal

219 in which it was held that when an award u/s 16, Arbitration Act, has been filed, the result is not that there is a suit in which a decree has been

passed but that there is an award which is enforceable as a decree, and in AIR 1933 61 (Privy Council) a case under the Arbitration Act, it was

held that a decree cannot be passed on the award as is done under Schedule 2, Civil P.C. These last two decisions do not, I consider, throw any

light on the question at issue here. It certainly cannot be held to be correct law that when a matter has been referred to arbitrators and they have

submitted an award, subsequent to the award being filed in Court the property can be sold without such sale falling under the rule of *lis pendens*.

Pranjivan Goverdhan Das v. Bajju (1879) 4 Bom 34 is a direct authority on the point. It was there held that the presentation in Court of the award

obtained by the plaintiff was equivalent to the presentation of a plaint for the specific performance of the contract of mortgage and the proceedings

consequent thereon constituted a *lis pendens*. I stated at the outset that a general argument had been raised in this Court for the first time which

was not raised at all before the lower Courts and which is in my opinion contrary to the pleading in the plaint. It is that Rule 14 of the rules framed

under the Co operative Societies Act only enables the Registrar to pass a money decree and not a mortgage decree. The relevant words of the

rule are these:

Similarly in the case of dispute relating to a debt due to the Society by a member or past members or persons claiming through a member or past

member, a reference in writing may be made by either party to the Registrar.

7. It is argued that the only procedure by which a mortgage debt can be enforced is by the sale of the mortgaged property under Order 34, Rule

14. Civil P.C., that under Order 34, Rule 1 all puisne mortgagees should be made parties to the mortgage suit, and that if the decree in a mortgage

suit does not order the sale of the mortgaged property, the property could not be sold unless a proper suit is brought in the way prescribed by

Sections 65, 86, 88 and 99, T.P. Act: *Ghandranath Dey v. Baroda Shoondry Ghose* (1895) 22 Cal 813. It is urged that there might be puisne

mortgagees who are not members of the society and over whom the Registrar could have no control, and it is urged that if the Registrar could pass

a mortgage decree there would have been more elaborate and specific rules as to the parties to be added, the form of the decree, etc. On the

other side, it is pointed out that a great part of the loans of these societies are granted on mortgages (vide bye-law 44, p. 35 of the Manual). The

legal question raised is no doubt of very great importance and the arguments of the learned Advocates for the appellants have considerable weight.

But in the present case, I do not think the question arises for several reasons. The plaint recognises the decree distinctly. In para. 8 it says:

As the hypothecation effected in favour of the defendant Co-operative Rural Credit Society was a transaction which took place prior to the sale

effected in favour of the plaintiff, the plaintiff is entitled to pay to the defendants the amounts, etc., due under the decree passed in respect of the

said bond and redeem the hypo-theca.

8. There is no doubt that if the decree had not ordered the sale of the property the plaintiff would have been the first to rely on such a fact. In this

particular case there was no possibility of making the plaintiff a party either to the proceedings before the Registrar or to the execution proceedings

because his purchase was subsequent to the award and also to the institution of the execution proceedings. In my opinion the executing Court

could not refuse to execute the award nor could it amend it in any way. That is laid down in Ahmad Yar v. Go operative Credit Society, AIR 1926

Lah 547. It is no doubt the decision of a single Judge, but with respect I entirely agree with it. It cannot be said that on the face of it the award was

passed without jurisdiction. It is just possible that if the plaintiff brought a regular suit to set aside the award on the ground that such an award is no

contemplated by Rule 14, he might possibly succeed on the legal arguments now addressed to me. But certainly it cannot be said that the award

was on its face one passed without jurisdiction. The Court was therefore bound to execute it and a subsequent purchaser had no more rights

against the purchaser at the Court sale in execution of the decree than his vendor had. It was the business of the latter to have paid up the decree

amount at least before the confirmation of the sale, Har Shanker Prasad Singh v. Shew Govind Shaw (1899) 26 Cal 966. In the result therefore

the decree of the lower appellate Court is confirmed and the second appeal is dismissed with costs (one set).