

Sankara Vs. Kelu and ors.

Sankara Vs. Kelu and ors.

SooperKanoon Citation : sooperkanoon.com/774351

Court : Chennai

Decided On : Sep-02-1889

Reported in : (1891)ILR14Mad29

Judge : Muttusami Ayyar and ; Best, JJ.

Appellant : Sankara

Respondent : Kelu and ors.

Judgement :

Muttusami Ayyar, J.

1. The question arising for decision in this second appeal is whether the sale in execution of the decree in Original Suit No. 11 of 1885 is binding on the appellant. The decree, as it was framed, was only a money decree, and it did not direct the sale of the property in dispute. Although the judgment recorded in that suit might be considered in construing the decree, it could not be used for varying the decretal order so as to convert a money decree into a decree for the sale of property in default of payment. The interest then that passed by the sale was only the right, title and interest of the judgment-debtors at the date of the attachment in execution in 1887. But by the partition effected in December 1886, the property in question vested in the present plaintiff subject, upon the facts found, to the payment of the decree-debt, and his equity of redemption could not therefore be prejudiced by the sale. The decision of the Courts below rests on the ground that a

money decree against the karnavan is sufficient to validate a sale of tarwad property as against an anandravan, provided that the decree-debt is one which binds the tarwad. But in the case before us, the plaintiff had separated from the tarwad and his community of interest with the judgment-debtors had determined before the attachment and the sale in execution of the decree in Original Suit No. 11 of 1885.

2. The decrees of the Courts below must be reversed, the Court-sale set aside, and the 1st defendant declared entitled to remain in possession until the amount due to the 2nd defendant under the decree in Original Suit No. 11 of 1885 is paid by the plaintiff to the 1st defendant, and the suit dismissed in other respects. The 2nd defendant will pay the plaintiff's costs throughout.

Best, J.

3. The decree, in execution of which the plaint property was sold (when 1st defendant purchased the same), was passed in a suit brought by 3rd and 4th defendants, members and managers of the plaintiff's tarwad, for redemption of the plaint paramba from 2nd defendant, who was a kanomdar. Second defendant set up an additional debt or poramkadam of Rs. 37, and the Munsif, finding that the poramkadam set up by 2nd defendant was true and binding on the property, passed a decree (Exhibit II) in the following words:

hat the plaintiffs (now 3rd and 4th defendants) do pay to the defendant (now 2nd defendant) Rs. 131-4-4, the sum made up of Rs. 37 due under the poramkadam deed, and Rs. 64-4-4, the interest thereon to the date of the decree at the rate of one per cent., together with interest at the same rate from the date of the decree to that of execution on Rs. 37, the amount advanced, that the defendant (now 2nd defendant) do pay to the plaintiffs (now 3rd and 4th defendants) Rs. 37, the arrears of rent after deducting the kanom, together with rent at the rate of Rs. 6-6-0 and 50 cadjans, from the date of the decree to the surrender of the land;' and then follows the order as to costs.

4. The Subordinate Judge remarks with reference to this decree

that it is perhaps not artistically drawn out, but paragraph 5 of the judgment (Exhibit II) declares the relative rights and liabilities of the mortgagor and mortgagee'--and it is, he finds, 'capable of execution at the suit of either.

5. Paragraph 5 of the judgment (Exhibit III) is as follows:

I allow the poramkadam evidenced by Exhibit I to be charged on the property, and direct that the sum secured by that bond with one per cent, interest only throughout be paid with the kanom to defendant on eviction. With the above modification, I decree surrender of the land.

6. A judgment can no doubt be looked into to explain a decree; but neither in the judgment (Exhibit III) nor in the decree (Exhibit II) is there any authority given to the then defendant (now 2nd defendant) to recover the amount then found due to him by execution of that decree. The decree was merely one declaring this 2nd defendant entitled to a certain amount and directing him to surrender the property to the present 3rd and 4th defendants on the payment to him of that amount.

7. The sale of the property in execution of that decree on the motion of the 2nd defendant must, therefore, I think, be held to be invalid as against the plaintiff; and 1st defendant as purchaser at such sale must be held to have acquired merely a right to possession of the paramba as assignee of the 2nd defendant.

8. I would, therefore, set aside the decrees of both the lower Courts and declare the Court sale of no effect as against the plaintiff except in so far as it entitles 1st defendant to possession of the property in place of 2nd defendant, till the amount due to the latter under the decree (Exhibit II) be paid by plaintiff to 1st defendant.

9. The plaintiff's costs throughout should be paid by 2nd defendant.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com