

Ramaswami Goundan Vs. Kali Goundan

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Court : Chennai

Decided On : Oct-31-1918

Reported in : (1919)36MLJ571

Appellant : Ramaswami Goundan

Respondent : Kali Goundan

Judgement :

Ayling, J.

1. This petition arises out of an order of the Deputy Collector of Namakkal under Section 131, Madras Estates Land Act, setting aside a sale for arrears of rent
2. The preliminary objection is taken that this Court has no power to revise such an order. I do not think this objection can be upheld. It is true that Section 205 of the Act (read with the schedule, Part B, No. 19) gives a power of revision to the Board of Revenue or the District Collector in the case of such an order : and in the present case, petitioner has invoked the interference of both the authorities named without success. But Section 192 renders Section 115 of the present Code of Civil Procedure (old Section 622) applicable to all suits, appeals and other proceedings under the Madras Estates Land Act. It may seem undesirable that the power of revising the same order should vest in two authorities so different in their constitution and ordinary procedure as this Court and the Board of Revenue; and one may wonder whether such a result was deliberately intended by the

Legislature or arrived at by inadvertance. Nevertheless we have to interpret the Act as it stands. It is impossible to say that the grant of the power of revision to this Court is inconsistent with the grant of similar power to the Collector, and Board of Revenue : and I think it must be held that Section 192 vests this Court with the power of revision, which Petitioner invokes.

3. Its exercise is, of course, always discretionary; and where, as in the present case, the petitioner has previously applied to the revenue authorities under Section 205 without success, I think this Court might reasonably decline to exercise it unless imperatively called upon to do so to prevent a miscarriage of justice.

4. The facts of the case are clearly set forth in the order of the District Collector declining to interfere, which runs thus :

On the 24th may the last day open to him the counter-petitioner appeared with the deposit and applied to have the sale set aside. The Divisional Officer was absent, on casual leave; the clerk therefore told him to come on the 26th which he did. In the circumstances, I cannot say that the sale was improperly cancelled even though no notice was given as it sought to have been to the purchaser.

5. I decline to interfere on revision and dismiss the petition.

6. Petitioner's main contention is that the deposit of the amount by the defaulting ryot, within the period of 30 days from the sale is a condition precedent to the passing of an order setting aside the sale; and that unless it is strictly complied with, no matter what the circumstances may be, an order setting aside the sale is ultra vires and illegal. The admitted failure to give notice to the auction-purchaser before passing the order is also said to be an infringement of Order XXI, Rule 92, and to equally invalidate the order.

7. As regards the first objection, however strict the wording of Section 131, may seem to be, and although Section 5, Indian Limitation Act is not in terms applicable, authority is not wanting for a more reasonable and liberal interpretation of the section. *Shooshee Bhushan Rudro v. Govind Chunder Roy* I.L.R. (1861) C.

231 was a precisely similar case to the present one under the Bengal Tenancy Act; the learned Judges held that, on general principles, when a fixed period is given to do a certain act, and the person bound to perform it is, from no act of his own, but from some act or order of the Court, prevented from carrying it out, he gets the advantage of the next open day. This ruling was followed and the same principle applied in other cases in the same Court (Vide Peary Muhun Aich v. Ananda Charan Biswas I.L.R. (1891) C. 631) : and by a Bench, of this Court in Sambasiva Chari v. Ramaswami Reddi I.L.R. (1898) M 179 : 8 M.L.J 265 to a case under the Rent Recovery Act. It has been embodied in a statutory rule in Section 10 of the General Clauses Act as regards cases where the Court or office is actually closed. In the present case it may be said that the office or Court of the Deputy Collector was not closed on the last day of performance, but only the presiding Officer, the Deputy Collector himself, was absent on leave-This makes no difference. In consequence of his absence respondent found it just as impossible to get his deposit received, as if the office or Court had been shut up, and his failure to perform the act required of him within the time specified was equally occasioned by the act of the Court and by no act of his own.

8. I find nothing inconsistent with this in Chundi Charan Mandal v. Banke Behari Lal Mandal I.L.R. (1899) C 449 : In that case it was not shown that the judgment debtor's failure to deposit the full amount within the prescribed period was due to any act or mistake of the Court : and the learned Judges are at pains to make it clear that, if it had been, their decision might (not to say, would) have been different. In another case quoted Bibi Sharifan v. Mahomed Habibuddin (1911) Cri.L.J. 535 there is nothing to indicate that the failure to deposit within the prescribed time was due to any act of the Court; and the learned Judge whose judgment is relied on (Mookerjee, J.) had subscribed to the general principle laid down in Shooshee Bhusan Rudro v. Govind Chunder Roy I.L.R. (1890) C. 231 : Vide his judgment in Mahomed Akbar Zaman Khan v. Sukdeo Pande (1911) Cri.L.J. 467.

9. Appellant's vakil drew our attention to Government Notification No. 145, Revenue, dated the 27th March 1912, under which a deposit under Section 131 is allowed to be paid into any Sub-Treasury; and suggested that, as this alternative

course was open to him, respondent should not be allowed the benefit of the general principle. The course prescribed by the Act is payment to the Collector; and we are in no position to say that when respondent found the latter's office closed, against him, he was in a position to avail himself of the alternative course.

10. In my opinion it was competent to the Deputy Collector to set aside the sale in the circumstances, although the deposit was not made within the prescribed time.

11. Coming to the second point, whether failure to give notice is a mere irregularity, or vitiates the whole proceedings is open to argument. But taking the view most favourable to appellant, I should not be prepared to exercise our revisionary powers in this case on that ground alone. If the objection were allowed, our only course would be to set aside the Deputy Collector's order, and remand the application for disposal after due notice to appellant. But we have now had the advantage of hearing the case fully argued in all its aspects; and it is clear that appellant could bring forward no tenable objection to the setting aside of the sale, and that the Deputy Collector's order was a perfectly just, reasonable and proper one (apart from the omission to give prior notice) To remand the case in such circumstances would be futile.

12. I would dismiss the petition with cost.

Krishnan, J.

13. I agree and have nothing further to add except that I have already dealt with the reversional power of the High Court in my judgment in *Paramaswami Aiyangar v. Alamu Nachiar* : (1918)35MLJ632 which may be referred to.

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