

Champalal Vs. Gian Kaur and ors.

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Court : Chennai

Decided On : Nov-22-1963

Reported in : AIR1964Mad379

Judge : S. Ramachandra Iyer, C.J.

Acts : [Transfer of Property Act, 1882](#) - Sections 69, 69A and 69A(10)

Appeal No. : Civil Revn. Petn. No. 203 of 1963

Appellant : Champalal

Respondent : Gian Kaur and ors.

Advocate for Def. : T.R. Ramachandran, Adv.

Advocate for Pet/Ap. : S. Venkatachalam, Adv.

Judgement :

ORDER

S. Ramachandra Iyer, C.J.

1. This civil revision petition is filed against the order of the First Assistant Judge, City Civil Court, Madras, directing the Receiver appointed Under Section 69-A of the Transfer of Property Act at the instance of the mortgagee to sell the property. I am unable to see under what authority the lower court passed the order it did. The Receiver in the instant case was appointed Under Section 69-A of the Act. By

reason of such appointment, the receiver will be deemed to be the agent of the mortgagor and as such he will have the power to demand and recover all the income of which he is Receiver and such income that might be realised will accrue to the benefit of the mortgagee. But that does not mean that the Receiver can sell the property. There is in the present case a power of sale under the document vested in the mortgagee conformably to the provisions of Section 69 of the Act. But that power has to be exercised by the mortgagee and he has no right to apply to the court for sale; to enable him to do so will mean that the Court is acting at his behest and as his agent.

2. In *Muthialpet Benefit Fund Ltd. v. Devarajulu*, (S) : AIR1955 Mad455 , Ramaswami J. held that in appropriate cases the court could authorise a private sale by the Receiver. But that was a case where the mortgage suit was pending in the Court; the court there had jurisdiction over the property which was the subject-matter of the suit. Where no such suit is pending, I am unable to find any power in the court to direct a Receiver appointed Under Section 69-A to sell the property. Reference was made to Sub-section (10) of Section 69-A. That can enable the Court only to give such direction' regarding the management or administration of the property mortgaged and not to sell the same. The order of the lower court cannot therefore be sustained and is hereby set aside. The petitioner will be entitled to his costs.