

In Re: M. Subbiah thevar

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Court : Chennai

Decided On : Apr-23-1936

Reported in : AIR1936Mad700

Appellant : In Re: M. Subbiah thevar

Judgement :

Pandrang Row, J.

1. This is an appeal from the decree of the Subordinate Judge, Tinnevely, dated 16th October 1935, reversing in appeal the decree of the District Munsif of Tenkasi dated 25th September 1934 in O.S. No. 182 of 1933, a suit to set aside a sale held for arrears of rent under the Estates Land Act on 29th January 1931 and for an injunction restraining defendant 1 from interfering with the plaintiff's enjoyment of the property purported to have been sold. The suit was dismissed by the District Munsif on the ground that the sale was not vitiated by reason of anything alleged by the plaintiffs. On appeal, however, a new point was raised, viz., that the sale was invalid because it was conducted by a person who had no authority to hold it, and as this point, viz., that the conduct of the sale was by a person who had no authority to hold it, was conceded, the learned Judge found that the sale was invalid and accordingly allowed the appeal and decreed the suit as prayed for. It is contended in the first place that this new point should not have been allowed to be taken for the first time in appeal. No objection on this ground appears to have been raised in the lower appellate Court so far as can be seen from the judgment

of that Court. In my opinion it is not correct to say that the lower appellate Court had no jurisdiction to allow this point to be taken for the first time in appeal.' It is not alleged that by reason of the point being taken for the first time in appeal there has been any real prejudice caused to the appellant; the point is not one on which any evidence was necessary as it was conceded that the person who held the sale had no authority to hold it. I cannot, therefore, say that the decree appealed from is wrong, because it is based on a point raised for the first time in the lower appellate Court.

2. Next it is contended that the civil Court has no jurisdiction whatever to entertain a suit to set aside a sale for arrears of rent held under the Estates Land Act. There is really no authority in support of this general proposition. Decided cases do not go to this length. On the other hand the provisions of Section 189, Madras Estates Land Act, which alone limit or take away the ordinary jurisdiction of the civil Courts to decide all civil disputes do not oust the jurisdiction of the civil Court to decide a claim of this kind. What Section 189 says is that no civil Court in the exercise of its original jurisdiction shall take cognizance of any dispute or matter in respect of which a suit or application of the nature specified in parts A and B of the Schedule to the Act might be brought or made. Parts A and B of the Schedule do not include a suit or application to set aside a sale held for arrears of rent. That being the case it is clear that there is jurisdiction in the civil Court to decide whether a certain sale held under the Act for arrears of rent is valid or otherwise. For instance in *Chidambarm Pillai v. Muthammal* 1915 1 MLW 414, it was held that a suit for a declaration that a rent sale is legally void in consequence of the landholder not having applied to the Collector within the 45 days prescribed by Section 115, Madras Estates Land Act, is cognizable by civil Courts. The same case is authority for the proposition that the words 'any dispute or matter in respect of which such suit or application might have been brought or made' in Section 189, Madras Estates Land Act, refer only to suits described in the schedule and not to all suits arising out of a dispute or matter in respect of which suits might be brought. It was also held in *Gousa Mohideen Sahib v. Muthialu Chettiar* : AIR1914 Mad657(1) , that a suit to set aside the sale of a holding on the ground of fraud is cognizable by the civil Courts. In any case the burden lies on the appellant who denies the jurisdiction of the civil Court to establish the grounds on which such denial is

made. No such ground has been established, for Section 189 does not lend any support to this proposition.

3. I am, therefore, of opinion that this objection on the score of want of jurisdiction is not well founded and must be dismissed. It has not been seriously argued that if as a matter of fact the sale was held by a person who had no authority to hold it, it is nevertheless to be treated as valid merely because it purports to have been held under the Estates Land Act. In the absence of any authority to hold the sale, the sale cannot be regarded as valid. I am, therefore, of opinion that the decree appealed from is right. The appeal, therefore, fails and is dismissed. Leave to appeal is refused.

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