

Ramalingayya and ors. Vs. Velluri Narayanappa and ors.

Ramalingayya and ors. Vs. Velluri Narayanappa and ors.

SooperKanoon Citation : sooperkanoon.com/810558

Court : Chennai

Decided On : Nov-20-1925

Reported in : AIR1926Mad593

Appellant : Ramalingayya and ors.

Respondent : Velluri Narayanappa and ors.

Judgement :

1. In this case a money decree was passed in O.S. No. 661 of 1899 against one Pullanna and his three sons on the 7th March 1900. After Pullanna's death, the properties of the family were attached in execution of the decree in 1912. The appellants, who are Defendants Nos. 1 to 3, put in a claim petition on 16th January 1918. The District Munsif passed the following order:

The petition is presented too late. The claim will be notified. Petition is dismissed.

2. The defendant who had obtained mortgage-decrees in O.S. Nos. 719 and 720 of 1911, brought the property to sale and 1st defendant bought it in Court-auction on 26th August 1915 and took delivery of possession on 7th April 1916. The plaintiffs, who purchased the property in auction on 17th January 1913, in execution of the money decree in O.S. No. 661 of 1899, have brought the suit for possession of the property. The District Munsif and the District Judge held that the defendants were concluded by the order on their claim petition and that they could not resist the plaintiff's suit.

3. Mr. Justice Madhavan Nair dismissed the second appeal of the defendants. The contention of Mr. Seetharama Rao, for the appellants, is that inasmuch as the appellants had obtained a preliminary decree on 5th November 1913 and a final decree on 1st November 1915, the doctrine of *lis pendens* applies to the sale held between the passing of the preliminary decree and the final decree. It is 'difficult to follow the' argument that because the appellants brought a suit on a mortgage in their favour, and that the suit was pending, the order on the claim petition against them, which has not been set aside by a suit, is not binding upon them. Under Order 21, Rule 58, a person who objects to an attachment on the ground that the property is not liable to attachment may prefer a claim. And under Rule 63, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order shall be conclusive.

4. Mr. Seetharam Rao's contention is that this provision does not apply to this case, as the appellants had a preliminary mortgage-decree in their favour before the date of sale which was made final after the date of sale, the Court sale in execution of the money-decree should be held subject to their right under the decree. It was unnecessary for the appellants to have preferred a claim, but inasmuch as they preferred a claim they are bound by the provisions of Rule 63. It does not matter what their right is. If a person prefers, a claim under Rule 58, objecting to the attachment on the ground that the property is not liable to attachment, and if an order is passed against him, unless he brings a suit within one year for a declaration that the property is not liable to attachment and succeeds, the order is conclusive against him, and the fact that the appellants had a decree in their favour would not in any way help them. Even if they had obtained a final decree before the date of attachment, and preferred a claim to release the property from attachment relying upon their mortgage-decree, and if the Court rightly or wrongly dismissed their claim, and they did not choose to file a suit for declaration that the property was not liable to attachment, they could not afterwards set up a right as against the decree-holder who brings the property to sale or against the person who purchases the property in Court auction.

5. The next contention of Mr. Seetharama Sao is that the order of the District Munsif did not amount to a dismissal of his petition, as he directed that the claim be notified inasmuch as he prayed for the alternative that, if it is found to be impossible to enquire into the claim, it is prayed that the contents of this petition may be intimated to the intending bidders and that their signatures may be taken before the sale is held. The claim petition was put in under Rule 58 of Order 21 and the right under which the appellants claimed was also set out and documents upon which they relied were also mentioned in their claim petition and there was the prayer, that the claim may be allowed. In the light of these, it cannot be said that their claim petition was not dismissed.

6. Mr. Seetharama Rao relied upon *Ayya Pattar v. Attupurath Manakkal* [1919] M.W.N. 805 and *Parambil Saharabi v. Chekkutti* A.I.R. 1923 Mad. 295. Those cases have no application to the present as the claim petitions therein were not dismissed. Where a claim is not pressed, or where a claim petition is withdrawn or where the Court says it is unnecessary to dispose of a claim petition there is no order under Rule 61. But where there is an order under Rule 61 disallowing the claim, it cannot be said that there is no order against the claimant. This case is governed by the Full Bench ruling in *Venkataratnam v. Ranganaya kamma* [1918] 41 Mad. 985. There it was held that an order refusing to investigate a claim to attached property on the ground that there was delay in filing, it is an order passed against the claimant within the meaning of Order 21, Rule 63, Civil P.C., and that an order on a claim petition merely stating that as it was late it will be notified to the bidders is in effect an order rejecting the claim to which the provisions of Order 21, Rule 63, will apply. It was held in *Lakshumanan Chettiar v. Parasivan Pillai* : (1919)37MLJ159 that if a claim is dismissed after investigation or otherwise the mortgagee is barred after one year from the date of the order under Rule 11 of the Limitation Act from suing, on the mortgage, the execution purchaser or his representatives. The appellants not having filed a suit within one year for a declaration that the property was not liable to attachment the order on their claim petition is conclusive against them and, therefore, they cannot set up a valid defence to the plaintiff's suit. The judgment of Mr. Justice Madhavan Nair is correct and we dismiss the Letters Patent appeal with costs.

