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Court : Chennai

Decided On : Apr-24-1924

Reported in : AIR1925Mad368

Appellant : P. Ramalingappa and ors.

Respondent : A. Narayanappa and ors.

Judgement :

Madhavan Nair, J.

1. Defendants Nos. 1 to 3 are the appellants. The facts of the case are clearly stated in paragraphs 6, 7 and 8 of the District Munsif's judgment. The suit properties belonged to Pullanna and after his death, his three sons Pedda Chowdappa Chinna Chowdappa and Ranganna became entitled to them. The plaintiffs may be described as the decree-holder-Purchasers who purchased the properties in execution of a money-decree in Original Suit No. 661 of 1899 obtained against Pullanna and his children. The decree was passed on the 27th of March, 1900 and the sale was held on the 17th of January, 1913. On two hypothecations executed by Ranganna and Pedda Chowdappa of their shares in the properties, suits. Original Suits Nos. 719 and 720 of 1911 were instituted by the mortgagees. Preliminary decrees for sale were passed; on the 5th of September, 1911 and final decrees in 1915. The decree-holder's representatives, the present defendants Nos. 1 to 3, applied for the sale of these, properties. They

were sold on the 26th of August, 1915 and purchased by the first defendant. The plaintiffs in the present, suit were not parties to the execution proceedings in the two suits. It may here, be stated that under a sale-deed Exhibit I executed on the 1st of July, 1911, the share of Chinna Chowdappa, the other brother, had also come into the possessions of the family of defendants Nos. 1 to 3.

2. The question for consideration in this, case is whether, on the facts stated above,, the plaintiffs, or the appellants (defendants Nos. 1 to 3,) are entitled to the possession of the shares of Pedda Chowdappa, Chinna Chowdappa and Ranganna in the plaint lands. The lower Courts held that the appellant's right to possession of theses properties had become extinct in consequence of the adverse order that was passed by the Courts against them on their claim petition, Exhibit E. The facts relating to this claim petition are as follows : In execution of decree in Original Suit No. 661 of 1899 the sale, m already stated, was held on the 17th of January, 1913 when the properties were, purchased by the present plaintiffs. On the 16th of January, 1913 the father of the first and second defendants and undivided brother of the third defendant preferred a claim to these attached properties under Order 21, Rule 58, Civil Procedure Code. Exhibit E is the copy of the claim petition. This claim petition covered the rights on all the three brothers. In that petition they stated their claim to these properties, under the mortgage decrees and the sale by Chinna Chowdappa and prayed that their claim may be allowed and said that 'if it is found to be impossible to inquire into the claim now, the contents of the petition may be intimated to the intending bidders.' On this petition the following order dated the 16th of January, 1913; was passed : 'The petition is presented too late. The claim will be notified Petition dismissed.' The auction sale was held on the 17th of January, 1913.

3. The question for consideration is what is the effect of this order passed on Exhibit E as regards the right of the appellants to these properties? Two arguments have been put forward by the learned Vakil for the appellants : (1) that the order on the petition has been wrongly construed by the lower Court inasmuch as it really did not adjudicate anything about the claim of the appellants, still, as there was a preliminary decree in their favour passed on the 5th of September, 1911, which became final in 1915, the Court sale is affected by the doctrine of lis

pendens at least as regards the two shares of Pedda Chowdappa and Kanganna, the share of Chinna Chowdappa having been conveyed under Exhibit I. The answer to both these arguments, to my mind, depends upon the effect that is to be given to the order that was passed on the claim petition, Exhibit E. It has been held in Venkataratnam v. Ranganayakamma (1918) 41 Mad. 985, that 'an order upon a claim petition which expresses no final judgment on the right put forward but simply directs the sale after notifying the claim, is an order against the claimant and he is bound to institute a suit under Article 11 of the Limitation Act' per Sheshagiri Aiyar, J. at p. 997. The decision in Ayya Pattar v. Attupurath Manakkal (1919) M.W.N. 805 Lakshmi Ammal v. Kadiresan Chettiar A.I.R. 1921 Mad. 488 and Parambil Saharabi v. Chekkuthi A.I.R. 1923 Mad. 295 do not really help the appellants. In Ayya Pattar v. Attupurath Manakkal (1919) M.W.N. 805 the claimant's prayer was that the objections might be recorded and the Court passed an order to that effect. This certainly cannot be considered to be an order negating the rights of the claimants. In Lakshmi Ammal v. Kadiresan Chettiar A.I.R. 1921 Mad. 488 it was found that the claim could not be investigated by the Court because the District Munsif had no authority to dispose of it and it became unnecessary to investigate the Claim when the sale was stopped. Therefore, it was held that the order did not negative the right set up by the claimants. In the order passed upon the claim petition in Parambil Saharabi v. Chekkuthi A.I.R. 1923 Mad. 295 also there was no adjudication against the claimants. In the present case it cannot be said that the order did not negative the rights of the claimants. The petition is expressly stated to be dismissed. Applying the decision in Machi Raju Venkataratnam v. Vadrevu Ranganayakamma (1918) 41 Mad. 985 I am of opinion that the order passed on the claim petition in this case is an order negating the rights of the claimants; (see also Lakshman Chettiar v. Parasivan Pillai : (1919)37MLJ159 . It is admitted that no suit had been laid as yet to set aside this order dated the 16th January, 1913. In this case the defendants had lost their rights long before the passing of the final decree on account of their failure to get the claim order set aside. That being so, it is not now open to the appellants to set up their claim to the properties. It was held in Peda Yarkayya v. Kanumari Venkata Krishnaraju (1917) 6 L.W. 281 that an order on a claim petition adverse to the defendant not having been set aside he could not take advantage of a suit filed

by the plaintiff to re-agitate the question of his title, and that the fact that both the plaint and the written statement in the subsequent suit were within one year from the date of the order did not affect the question.

4. Under these circumstances, I overrule the contentions raised by the appellant's learned Vakil and dismiss the second appeal with costs.

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