

Subramania Pillai Vs. Masterly

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Court : Chennai

Decided On : Sep-24-1975

Reported in : AIR1976Mad303; (1976)1MLJ341

Appellant : Subramania Pillai

Respondent : Masterly

Judgement :

K. Veeraswami, C.J.

1. This appeal under the Letters Patent by the plaintiff turns on whether there was a substantial representation in the Court proceedings resulting in a sale in execution of a mortgage decree obtained against Chempakaraman Pillai. For the purpose of this Appeal, it is enough to say that the property in question was subject to a usufructuary mortgage executed on 9-4-1100 M.E., and this was followed by a simple mortgage executed by the owner on 3-10-1101 M.E. The second mortgage was enforced through Court, but, before the decree was executed, the mortgagor had died. One Lakshmi was impleaded as his legal representative in the execution proceedings. Eventually, there was a sale in favour of the assignee-decree holder, who got a sale certificate for himself. The present appeal arises out of a suit for redemption of the usufructuary mortgage brought by the purchaser of the equity of redemption from the heirs of the original mortgagor. Raghavan, J., who heard the second appeal arising out of the suit, allowed it and dismissed the suit on the ground that the appellant no longer owned the equity of

redemption. He was of opinion that Lakshmi, as a legal representative, substantially represented the widow or widows of Chempakaraman Pillai and that therefore the Court sale was good. But he granted leave.

2. We are of the same opinion. A perusal of the finding, which Raghavan, J., called for and looked into, convinces us that the inclination of the finding Judge was to hold Lakshmi not to be a stranger, but closely associated with the family of Chempakaraman Pillai. This inclination is to be found from the circumstances that Lakshmi's address was given as the house of late Chempakaraman where his widow or widows lived. Lakshmi was the widow of his brother. Even the evidence on the appellant's side accepted a custom in the community permitting a brother to remarry his brother's widow. But when the evidence was sought to be made clear as to the existence of the widows of Chempakaraman Pillai, the deponent for the appellant stated that he forget the name of the widows, though Chempakaraman Pillai was his relation and he himself performed his obsequies. On these circumstances, the Subordinate Judge who rendered the finding was inclined to think that she was closely, as we said, bound up in relationship with Chempakaraman. Pillai. But he stopped short of finding the exact relationship. That we can appreciate and he was not called upon to state conclusively in the context.

3. All that is necessary to see is whether in the execution sale proceedings there was proper representation by the judgment-debtor or his legal representatives. It is not always a legal requisite that, inevitably, only the heirs, all of them or any of them, should figure as legal representatives. The procedural law requiring representation will stand satisfied if there is substantial representation in the sense that all that could be done in defence was done by someone interested in the issue in the suit. Lakshmi in obedience to the summons entered appearance through an advocate and took time. That shows that she participated in the sale proceedings. Raghavan, J., accepted the finding of the Subordinate Judge that Lakshmi substantially represented the widow or widows of Chempakaraman Pillai who were his heirs. That being so we hardly find any cogent reason to differ from the view of Raghavan, J.

4. The appeal is dismissed. No costs. The cross-objections are not pressed.
Dismissed. No costs.

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