

Padmanabha Iyer Vs. Visalakshmi Achi

LegalCrystal Citation : legalcrystal.com/808062

Court : Chennai

Decided On : Apr-19-1937

Reported in : AIR1938Mad283

Appellant : Padmanabha Iyer

Respondent : Visalakshmi Achi

Judgement :

ORDER

Venkataramana Rao, J.

1. This is a revision petition against an order made in the course of proceedings taken Under Section 40, Revenue Recovery Act, for delivery of possession of the property purchased by the petitioner in a revenue sale. The property known as Mattangal estate was brought to sale for arrears of revenue by reason of the default committed by the pattadars Karuppan Chetti and Avadayam Chetti and purchased by the petitioner Padmanabha Iyer. The said sale was confirmed on 20th June 1935 and a certificate of sale was issued in his favour Under Section 38, Revenue Recovery Act. On the strength of the said certificate, he made an application to the District Court of Tanjore for delivery of possession of the said property and an order for delivery was made; but when he sought to take possession, he was obstructed by Visalakshmi Achi, the respondent herein. Thereupon the petitioner filed an application Under Order 21, Rule 95 and 98, Civil P.C. for removal of the obstruction and delivery of possession. The plea of the respondent was that the purchase of the estate was made benami for her and with the aid of her moneys, and that she soon after took possession of the estate in pursuance thereof and has been in possession of the village in her own right as the real purchaser. The learned District Judge directed an enquiry into the matter. It is against this order this civil revision petition has been filed.

2. The contention of Mr. V.T. Rangaswami Ayyangar on behalf of the petitioner is that the lower Court has no jurisdiction in an application Under Section 40, Revenue Recovery Act to go into the question of benami, that it was bound to direct delivery of possession by removing the obstruction and that the only remedy for the respondent is only to file a suit for establishing her right. He laid considerable emphasis on the language of the section, especially the words 'shall cause the proper process to be issued.' Section 40, Revenue Recovery Act, has been enacted for the purpose of enabling a purchaser at a revenue sale to get possession of the property without resorting to the necessity of instituting a suit as there is no machinery provided by the Act to enable such purchaser being put in possession. The aid of the Civil Court is therefore provided for by the Legislature and the section therefore enacts that the purchaser at a revenue auction must be treated in the same manner as if the

purchased lands had been decreed to the purchaser by a decision of the Court. This section was interpreted so early as 1889 by a Bench of this Court consisting of Muthusami Ayyar and Parker JJ. in A.A.A. O. No. 27 of 1889, where the learned judges held that the intention of the enactment was to place the purchaser for the purpose of recovering possession of the land purchased in the position of a decree-holder and that he would be entitled to such remedies as would be available to a decree holder in execution proceedings. The same learned Judges adhered to the same interpretation in *Chithambaram v. Natasam* (1891) 1 M.L.J. 594 and they remarked thus:

If the execution of the process is obstructed, the provisions of the Code of Civil Procedure become applicable, To hold otherwise, would be to defeat the intention of Section 40, Revenue Recovery Act, which gives a certificate the same force, which a decree of Court has under the Code of Civil Procedure.

3. This view was followed in a case reported in *Gnanasambanda Pandara Sannadhi v. David Nadar* (1904) M.L.J. 433 where the learned Judges held that where a Court awarded possession Under Section 40 to a purchaser at a revenue auction, restitution could be ordered on the sale being set aside. See also *Sambasiva Mudaliar v. Panchanada Pillai* (1908) 31 Mad 24 which seems to take the same view. This view is in consonance with the principle that when a duty of a particular character is cast upon an established Court, it imports that the ordinary incidents of the procedure of that Court are to attach. It was on the application of this principle that when a question it arose Under Section 78, Madras Hindu Religious Endowments Act, which provides that on the appointment of a trustee by the Hindu Religious Endowments Board, constituted under the act, the Court may on application by a person so appointed and on the production of the order of appointment direct delivery of possession of the property to the trustee, *Curgenv J.* held that it would be in the competency of the Court to investigate an objection made to the delivery of such possession and the principle of Order 21, Rule 100, could be invoked: vide *Guruvammal v. Arumugha Padayachi* (1932) 19 A.I.R. Mad 164 . A similar view was taken by *Venkatasubba Rao J.* in *Seshasayee v. Govinda Pillai* (1935) 22 A.I.R. Mad 612 where the learned Judge observed thus:

The applications mentioned in Section 78 must; under the Act be to a District Court and there is therefore no reason to hold that they are not proceedings in a Court of Civil jurisdiction within the meaning of Section 141 mentioned above. If that be so, the provisions of Order 21, Rule 97, 98 and 99 become applicable and the Court can in virtue of the power conferred by them make the investigation.

4. It will be noticed that the application in this case was made by the petitioner under Order 21, Rule 95 and 98, Civil P.C., Therefore the question whether the respondent is resisting possession at the instigation of the defaulter or on her own account has to be gone into. Her case is, she is in possession of the estate on her own account. It is now settled law that there is nothing in the provisions of the Revenue Recovery Act which would preclude a real purchaser from contending that the purchaser in whose name the certificate was issued Under Section 38, Revenue Recovery Act, is only a benamidar. The decided cases show that it would be open to a defaulter to recover or to defend his possession in suits brought against or by a certified purchaser : *Muthunaiyan v. Sinna Samavanijan* (1906) 28 Mad 526 and *Narayanaswami Padayachi v. Govindaswami Padayachi* (1906) 29 Mad 473. The reason of the rule is that the benami purchase not being illegal must be given effect to in so far as they

have not been prohibited by any enactment and even the limited bar placed by Section 66, Civil P.C., would not apply to a case of purchase at a revenue sale. The question of benami would be relevant for ascertaining the nature of possession of the respondent. It seems to me therefore that the order of the lower Court directing enquiry is correct. The words ' shall cause the proper process to be issued ' only mean that on an application for delivery of possession the Court must issue the appropriate writ, but that can only be directed in accordance with the provisions of the Civil Procedure Code after making such an enquiry as may be necessary and is contemplated by the sections relating to such delivery of possession.

5. The next contention of Mr. Rangaswami Ayyangar is that before the Collector the respondent objected to the issue of certificate in the name of the petitioner but in spite thereof the Collector issued the certificate in his name and therefore she is precluded from raising this objection. On reference to the order, I find the Collector declined to go into the said matter. It seems to me that Under Section 38(5), Revenue Recovery Act, it would not be competent to the Collector to go into the question of benami. Under that section, once the sale is confirmed, the Collector is under an obligation to register the lands in the name of the person declared to be the purchaser and grant the certificate to such purchaser, that is the person who is declared to be the purchaser. There is therefore no force in this contention of Mr. Rangaswami Ayyangar. In the result, the civil revision petition fails and is dismissed with costs.