

Privy Council Appeal No. 125 of 1919.

Dewan Bahadur V. Ramabhadra Naidu - - - - *Appellant*

v.

Kadiriyasami Naicker - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY, 1921.

Present at the Hearing :

LORD BUCKMASTER.

LORD SHAW.

SIR JOHN EDGE.

[*Delivered by* LORD BUCKMASTER.]

The father of the respondent on this appeal was formerly the owner of a small zamindari known as Doddappa Nayakanur, and on the 15th September, 1893, he executed a mortgage of the property in favour of one Sabhapathi Chetty. The mortgagee took proceedings in 1901 in the Subordinate Court of Madura against the mortgagor and against the respondent, who was his son, to enforce the mortgage, and obtained in October, 1901, a decree for the amount of the mortgage money and, in default, for sale of the mortgaged properties. The mortgagee, in 1906, assigned his decree in favour of the present appellant, who brought the mortgaged properties to sale in execution of the decree, and having obtained leave to bid, purchased them on the 22nd April, 1907. The sale was confirmed on the 1st July of the same year, and delivery was made to the appellant on the 3rd, 14th and 15th August, 1907. The questions that have arisen upon this appeal depend entirely upon the determination of what was actually purchased by the respondent. The facts that give rise to the dispute may be shortly stated. The mortgage included in its parcels "the pannai lands in certain named villages which belong to me and which are in my enjoyment." At the date of the mortgage certain pannai lands to the extent of 226 kulis were not in the enjoyment of the mortgagor at all. They were in fact in the

enjoyment of the widow of the previous zamindar of the property, who had been in the possession of them since 1877 by an arrangement made with her husband.

The learned Judge of the Subordinate Court of Ramnad at Madura and the Judges of the High Court at Madras, from whom this appeal has been brought, have alike decided that in these circumstances these 226 kulis were not included in the mortgage. Their Lordships are in entire agreement with this opinion and they have nothing to add by way of emphasis or further reasons to the arguments stated by the learned Judges as those which lead to their conclusion.

The widow died in June, 1901, and at the date of the decree in October, 1901, in execution of the mortgage, the mortgagor and his heir were in possession of these properties. The decree for the realisation of the mortgage set out the villages and hamlets, and directed their sale with all "the pannai lands belonging to the defendants and in their enjoyment," and the sale proclamation followed the words of the decree. The property was actually sold on the 22nd April, 1907, and objections were taken to the sale, among other things, upon the ground not that the pannai lands were outside the mortgage and excluded from the sale proclamation, but because there ought to have been a list of the pannai lands which contained by measurement 500 acres; these objections were disallowed and the sale was, by order of the Subordinate Court, confirmed on the 1st July, 1907, and this order was supported on appeal. The sale certificate was dated the 25th July of the same year, and it included "the whole of the pannai lands belonging to and enjoyed by the sons of the first defendant, who acquired them as legal representatives of the first defendant" and all incomes, rights and privileges attached to the zamindari.

It is in their Lordships' opinion impossible to construe this sale certificate as limiting in any way the extent of the pannai lands to which it referred.

At the time when it was issued, the whole of the lands in dispute were in fact in the enjoyment of the sons of the mortgagor, who had acquired them as his representatives. The learned Judges of the High Court appear to regard the words set out as capable of explanation and limitation by reference back to the mortgage itself; but their Lordships are unable to accede to this contention. There is no ambiguity in the words of the certificate that are capable of explanation by such means, and the object of the sale certificate would be defeated if it were possible to change its plain meaning by reference to other documents. The rights of the mortgagors, however, need not have been taken away by this fact as they were at liberty to have taken proceedings in the suit in order to raise the contention that they now put forward under Section 47 of the Code of Civil Procedure, 1908, but this they have never done and it is now too late. The atthakshi followed the words of the sale certificate and consequently of these lands possession was duly given.

The learned Judges of the High Court took a different view, holding that the general words in all the documents must be limited by reference back to the mortgage, but that of the 226 kulis all but 68 were actually delivered owing to the reference in the document directing delivery of possession of the property to the encumbrances which affected 158 kulis of the land in dispute. Their Lordships would agree with this conclusion if they placed the same construction on the sale certificate as that accepted by the learned Judges of the High Court, but this they are unable to do. The sale certificate was in their opinion plain, and its meaning was accepted by all parties at the time, showing that even if they misunderstood the operation of the mortgage they were under no misapprehension as to that of the certificate. Certificates of sale are documents of title which ought not to be lightly regarded or loosely construed. There is full opportunity for challenge of all proceedings in the execution of mortgage decrees at the time, and except in clear cases a purchaser ought not to be harassed in his possession by disputes arising years after his purchase. They are consequently unable to assent to the view taken by the High Court, that any part of the pannai lands should be excluded from the sale certificate, and they think that the Subordinate Judge was right in holding that they were all bound by the decree and included in the sale.

For these reasons their Lordships will, therefore, humbly advise His Majesty that this appeal should be allowed with costs, and the decree of the Subordinate Judge restored.

In the Privy Council.

DEWAN BAHADUR V. RAMABHADRA NAIDU

v.

KADIRIVASAMI NAICKER.

DELIVERED BY LORD BUCKMASTER.

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