

ADENNA
v.
CHINNA
RAMAYYA.

rather that its purpose is to include among those who can apply such persons as mortgagees and lessees of the property, who may be concerned to avoid a transfer of the judgment-debtor's title, although their own interest may not be "affected", using that word in its strictly legal sense. Accordingly we confirm the order of the Subordinate Judge and dismiss the Civil Miscellaneous Second Appeal and the Civil Revision Petition, the latter with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Devadoss.

1927,
October 18.

BATCHA CHINNA VENKATARAYUDU AND OTHERS
(PETITIONERS), PETITIONERS,

v.

THE MAHARAJA OF PITHAPURAM AND OTHERS
(RESPONDENTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), ss. 192, 125—Civil Procedure Code (Act V of 1908), O. XXI, r. 58—Claim petition by mortgagee—Rent decree in a Revenue Court—Execution proceedings in Revenue Court—Mortgage created before the Act—Decree on such mortgage before the Act—Claim petition by mortgagee, filed before the Revenue Court, whether can be entertained—O. XXI, r. 58, whether applicable under the Act.

Under section 192 of the Madras Estates Land Act, the provisions of the Civil Procedure Code, excepting a few provisions, are made applicable to proceedings under the Act; and there is no express provision which exempts Order XXI of the Code from applying to proceedings in execution in the Revenue Court of rent decrees under the Act.

* Civil Revision Petition No. 308 of 1926.

Consequently, a claim petition under Order XXI, rule 58 of the Code can be entertained in a Revenue Court in proceedings in execution of a rent decree before such Court, when such decree is not in the nature of a mortgage decree but is only a money decree.

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Where the claimant had obtained a mortgage right over the holding from the judgment-debtor and obtained also a decree on such mortgage before the passing of the Madras Estates Land Act, he had the mortgagee's right over the property on the date of the application for sale in execution of the decree for rent, and his right was saved under section 125 of the Act.

PETITION under section 115, Civil Procedure Code, to the High Court to revise the order of the Court of Revenue Divisional Officer at Cocanada in E.P. No. 113 of 1923.

The material facts appear from the judgment.

K. Kameswara Rao for petitioners.

A. Krishnaswami Ayyar for respondents.

JUDGMENT.

This is an application to revise the order of the Revenue Divisional Officer of Cocanada, dismissing the claim petition of the petitioner. The Divisional Officer held that Order XXI, rule 58, Civil Procedure Code, did not apply to execution proceedings under the Estates Land Act. Under section 192 the provisions of the Code of Civil Procedure are made applicable excepting a few to proceedings under the Estates Land Act, and there is no express provision which exempts Order XXI from applying to proceedings in execution of rent decrees. In the absence of specific provisions to the effect that a claim petition is not to be entertained by a Revenue Court I am not prepared to hold that an application under Order XXI, rule 58, cannot be made to the Revenue Court. It is not contended for the respondent that the rent decree in this case is in the nature of a mortgage decree, no doubt a claim petition is not competent when a mortgage decree is being executed.

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The petitioner had a mortgage right over the holding before the passing of the Estates Land Act, and any right acquired before the passing of the Estates Land Act in the holding is saved by section 125 of the Act. The petitioner filed a suit in 1907 on two mortgages and obtained a decree before the passing of the Act, and he therefore had the mortgagee's right on the date of the application over the property which was sought to be put up for sale. It is suggested on behalf of the respondent that the petitioner became owner of the equity of redemption before the decree in favour of the respondent in 1919 and therefore he being the owner of the holding the landlord was entitled to bring it to sale. That question would depend on the question whether the petitioner became the owner by purchase in Court and as that matter has not been investigated, it is not possible to express any opinion on the point. I therefore set aside the order of the Divisional Officer and direct him to restore the claim petition to file and dispose of it according to law. Costs of this application to abide the result.

K.R.
