APPELLATE CIVIL.

Before Sir Guy Rutledge, Kt., K.C., Chief Justice, and Mr. Justice Brown.

ABDUR RAUF CHOWDRY

v.

N.P.L.S.P. CHETTYAR FIRM.*

1929

Jan. 30.

Lis pendens, *doctrine of, will not apply where government or local authority sells property for default of taxes—Suit pending between defaulter and his creditor—City of Rangoon Municipal Act (Burma Act VI of 1922), s. 194—Burma Land and Revenue Act (II of 1876), ss. 46, 47, 48—Corporation's summary powers to sell property for default of "property-taxes."*

When there is a default in payment of such taxes as are "property-taxes" within the meaning of s. 80 of the City of Rangoon Municipal Act, the Corporation are entitled to put into force the summary method given in the Lower Burma Land and Revenue Act against the immoveable property itself, which is quite independent of any remedy against the defaulter personally. The Corporation can sell the defaulter's property by auction free from incumbrances.

R.M.V.V.M. Firm v. *Subramaniam*, 5 Ran. 458—*referred to.*

The doctrine of *lis pendens* will not apply to such a sale, merely because a law suit in respect of the property was pending at the time of sale between the defaulter and his creditor.

K. C. Bose for the appellant.

S. C. Das for the respondents.

RUTLEDGE, C.J., and BROWN, J.—This is an appeal from the judgment and decree of the Original Side of this Court.

The facts are as follows :—

By a registered deed (Exhibit B), dated the 7th December, 1922, one Ma Aye Nu *alias* Fatima Bi Bi mortgaged to the respondent firm for Rs. 3,000, premises known as No. 190, F Street, Tatmye Quarter, Rangoon. The mortgagee did not give any notice of his mortgage to the Rangoon Corporation.

* Civil First Appeal No. 236 of 1928 from the judgment on the Original Side in Civil Regular No. 364 of 1926.

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The mortgagor made default in paying the property-taxes from the second quarter of 1925 to the fourth quarter of 1926. After due notice to the mortgagor, the premises were proclaimed for sale by Exhibit 2, dated the 9th April, 1927, which stated that the sale would take place on the spot on the morning of the 26th of April, 1927. The proclamation is stated to be under section 47, Rule 95, Direction 175, of the Lower Burma Land and Revenue Act, 1876. The proclamation further stated that "the right offered for sale will be free from all encumbrances created over it, and from all subordinate interests derived from it, except such as may be expressly reserved by me at the time of sale".

The Bailiff of the Corporation conducted the sale, which was knocked down to the appellant for Rs. 700 on the 26th of April.

We may here note that the respondent filed his mortgage suit against the mortgagor and her husband on the 22nd of July, 1926. If he had made any enquiry he would have found that the taxes had not been paid on the mortgaged premises for over a year, and, by not having given notice of his mortgage to the Corporation, the latter had no means of giving him notice of the mortgagor's default.

After the sale the respondent amended his plaint, joined the auction-purchaser and pleaded fraud and collusion, while the auction-purchaser became the *benamidar* of the mortgagor.

The learned trial Judge makes an initial mistake in the beginning of his judgment by saying that the appellant "was the purchaser of the property at a Court auction sale".

If this had been an ordinary Court auction sale, all that could be sold in execution was the right, title and interest of the judgment-debtor. On the

face of the record, this was not a Court auction sale at all, but a sale under section 47 of the Lower Burma Land and Revenue Act, which provides a summary method of proceeding against the land itself where the Revenue Officer finds that there exists any permanent, heritable and transferable right of use and occupancy by selling it at a public auction.

By section 194 (1) of the Rangoon Municipal Act, 1922, "any arrears of tax or any fee or other money claimable by the Corporation under this Act may be recovered as if they were arrears of land revenue."

Cases have arisen in which the Courts have refused to construe similar words as giving a local body or the Income-tax authorities the right to resort to the summary method by the sale of immoveable property for the recovery of dues of a personal nature.

On this question we have been referred to a lucid judgment of Mr. Justice Chari in the case of *R.M.V. V.M. Chettyar Firm* v. *M. Subramaniam and another* (1). On page 466 the learned Judge after reviewing a number of a cases, observes :—

> "I am, therefore, of opinion that, so far as 'property-taxes,' as defined in section 80 of the City of Rangoon Municipal Act, are concerned, it is open to the properly authorized officer of the Municipality to direct the recovery of arrears in the manner prescribed by sections 46 and 47 of the Burma Land and Revenue Act, and that, to a sale held under these sections the provisions of section 48 of the Act will apply. I am strengthned in the conclusion I have arrived at by the fact, to which my

(1) (1927) 5 Ran. 458.

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attention has been drawn by the learned advocate for the 2nd defendant, that the provisions of the Burma Municipal Act and the Burma Town and Village Lands Act whereby lands paying Municipal taxes are exempted from land tax, in lieu of the Capitation-tax, show that the Municipal 'property-taxes' were meant as a kind of substitute for land tax, and that the Legislature intended to put the Municipal 'property-taxes' in the same position as land taxes."

We are of opinion that the view is correct. The learned trial Judge bases his judgment in the main on the doctrine of *lis pendens*. We do not consider that the doctrine applies to this case at all. It would, indeed, be a dangerous extension of the doctrine to hold that neither Government nor a local body could recover its taxes or rates from a defaulter so long as a law suit was pending between the defaulter and some of his other creditors.

For the reasons already given we are of opinion that when as in this case the tax in respect of which the default is made is a property tax the Corporation are entitled to put into force the summary method given in the Lower Burma Land and Revenue Act against the immoveable property itself, which is quite independent of any remedy against the defaulter personally.

The only question remaining is : Has the respondent established fraud and collusion on the part of the auction-purchaser and the mortgagor ?

In our opinion he has completely failed. The only witness called on his behalf is his clerk, Shanmugam. In examination-in-chief he says : "I think she, (the mortgagor), had purchased it in the name of the 4th defendant. I say this because the 4th defendant is

related to the 1st defendant". In cross-examination he admits that he does not know personally how the 1st and 4th defendants are related; that he has no personal knowledge about the sale of the house by the Corporation; and that he has no witnesses to show that the house was purchased by the 1st defendant in the name of the 4th defendant.

The appellant denies that he is in any way related to the mortgagor or her husband. He admits that she occupies one of the rooms of the building and pays him Rs. 15 a month as tenant.

The Corporation Bailiff, Maung Aung Hla, who held the auction sale, states that the house was an old house, worth about Rs. 1,000. Accepting this as the value of the house, Rs. 700, at an auction sale for non-payment of rates, seems to be a very fair price.

The appellant states that he went to Pazundaung on the morning of the auction casually and there saw a man beating a gaung. This is not very likely; and, if the respondent had had any evidence connecting the appellant with the mortgagor, this would be of some weight. But in the absence of any such evidence, and in view of a reasonable price having been paid, this admission is quite inadequate to base a finding of fraud and collusion. There is no reason whatever for thinking that there had been collusion on the part of the officers of the Corporation. They had been more than usually forbearing in respect of their unpaid taxes. The respondent's clerk admits that in other cases his firm had given the Corporation notice of their mortgages, and, in our opinion, they have only themselves to blame for not doing so in this case and for not making any enquiry as to whether the rates were being paid.

We accordingly allow the appeal and dismiss the suit, so far as the appellant is concerned, with costs in both Courts.