

APPELLATE CIVIL.

Before Mr. Justice Mackney.

MAUNG MYA DIN

v.

K.P.A.P. CHETTYAR FIRM.*

1939

Aug. 22.

Co-operative Societies Act, s. 51—Sale of defaulter's land by revenue officer at instance of Registrar—Mortgage created by defaulter—Sale of land subject to mortgage—Sale not for arrears of land revenue—Burma Land and Revenue Act, s. 46 and following sections—Revenue officer's act without authority—Civil Court's jurisdiction.

The provisions of s. 46 and following sections of the Land and Revenue Act are available only when the revenue officer is seeking to recover arrears of land revenue (or analogous tax) accruing in respect of the land against which he is proceeding under those sections; that is to say, when he sells land under s. 47 he can do so only in the attempt to recover arrears of land revenue accruing from that very land.

If a sale is held by a revenue officer on the requisition of the Registrar of a co-operative society for sums due by a defaulting member he cannot apply section 46 and the following sections of the Act. A purchaser at such sale buys only the right title and interest of the defaulter in the land, and the sale cannot override a valid mortgage created by the defaulter on the land. The words used in s. 51 of the Co-operative Societies Act are "in the same manner as arrears of land revenue", and not "as if they were arrears of land revenue."

R.M.V.M. Chettyar Firm v. Subramaniam, I.L.R. 5 Ran. 458; *Sankaran v. Ramaswami*, I.L.R. 41 Mad. 691, referred to.

Where the question is not as regards the validity of a sale by a revenue officer under s. 47 of the Land and Revenue Act, but the question is whether an officer had any legal authority to act in the manner he did, the civil Court has jurisdiction to decide the matter.

Kya Gaing for the appellant.

N. K. Bhattacharya for the respondents.

MACKNEY, J.—The facts of the case are set out in the judgments of the lower Courts.

The property in suit, consisting of two leased house-sites in Paukkon town and a house thereon, were

* Civil 2nd Appeal No. 152 of 1939 from the judgment of the District Court of Insein in Civil Appeal No. 26 of 1938.

mortgaged by Ko Tha U and Ma Mya together with other property on the 9th May 1921. A further mortgage was taken on the 25th July 1925. In 1931 most of the mortgage debt was settled by transfer outright to the respondent Chettyar Firm, the mortgagee, in settlement of most of the mortgage debt, leaving a balance of Rs. 1,500 due on the property in suit.

Ma Mya, the wife of Ko Tha U, owed money to a certain co-operative society. This society went into liquidation and the liquidator ordered Ma Mya to make repayment of her debt. Under section 51 of the Co-operative Societies Act, the liquidator moved the Registrar to make a requisition to the Collector of the district to recover the amount, in the same manner as arrears of land revenue. Acting on this requisition the Collector directed the Township Officer, or Assistant Collector, of Taikkyi to take steps to realize the amount.

The procedure adopted by this officer is somewhat obscure. As the learned District Judge has remarked in his appellate judgment, to a certain extent he appears to have proceeded under section 45 of the Land and Revenue Act and also under section 46. Certain notices appear to have been issued under section 45 but it is clear that the order proclaiming the property for sale must have been issued under sections 46 and 47 of the Act, for the officer directed that only ten clear days' notice of the proclamation of the sale should be given. Moreover, the certificate of sale granted to the purchaser of the property, Maung Mya Din, was granted under section 47 of the Act.

Maung Mya Din happens to be the son-in-law of Ko Tha U and Ma Mya.

The Chettyar Firm then brought the suit, out of which this appeal arises, for recovery of Rs. 1,500 due on their two mortgage bonds. The suit was resisted by Maung Mya Din on the ground that under the

1939.

MAUNG
MYA DIN
v.
K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

1939

MAUNG
MYA DIN
v.
K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

operation of section 47 of the Land and Revenue Act he had purchased the property free of all encumbrances. He maintains that he had no notice of the mortgages and purchased the property *bona fide* on the implied assurances of the revenue officer that the property was free from all encumbrances. Maung Mya Din subsequently had the leases, which were in Ko Tha U's name, transferred to his name. When the house was damaged by fire he made extensive repairs and improvements.

The Subdivisional Court rejected Maung Mya Din's contentions and granted the plaintiff firm a decree as prayed. On appeal this decree was affirmed.

The first question to be decided is whether the revenue officer was empowered, in view of the provisions of section 51 of the Co-operative Societies Act, to recover the amount due in the manner set out in sections 46 following of the Land and Revenue Act.

It is urged, in the first place, by the appellant that in view of sections 55 and 56 of the Land and Revenue Act no civil Court can exercise jurisdiction in this matter. Section 56, clause (a), bars the jurisdiction of the civil Courts in matters, claims and questions mentioned in the first proviso to section 55. Section 55, first proviso, clauses (i) and (j) refer to questions as to the legality of any process issued under section 45 and questions as to the validity of a sale under section 47, or as to the effect of a proclamation under section 49.

There is no question here as to the legality of any process issued under section 45.

It is true if the revenue officer was empowered in this particular matter to proceed under sections 46 and 47, it might be said that a question as to the validity of the sale under section 47 was raised ; but it appears to me that that is not the question. The question to be

decided is whether the revenue officer had any legal authority to act as he did. If he had no such authority then it cannot be said that the sale which he effected was a sale under section 47 of the Act.

The words used in section 51 of the Co-operative Societies Act are as follows :

“ All sums due from a co-operative society or from an officer or member or past member of a society as such to the Government, and all sums awarded as costs under section 44, or payable by order of a liquidator under section 47, shall be recovered in the same manner as arrears of land revenue on a requisition being made by the Registrar to the Collector.”

It is to be noted that the words used here are “ in the same manner as arrears of land revenue ” and not “ as if they were arrears of land revenue ” as we find in similar provisions of other Acts.

The revenue officer then must proceed in the same manner as he would in recovering arrears of land revenue. The provisions of sections 46 following of the Land and Revenue Act are available only when the revenue officer is seeking to recover arrears of land revenue accruing in respect of the land against which he is proceeding under those sections ; that is to say, when he sells land under section 47 of the Act he can do so only in the attempt to recover arrears of land revenue accruing from that very land.

It appears to me, therefore, that in cases where sums due are to be recovered in the same manner as arrears of land revenue the revenue officer cannot apply sections 46 following of the Act in selling any land belonging to the defaulter unless the amount due from him is due on account of the land against which he is proceeding in a manner analogous to the manner in which land revenue might have been due on that account.

1939

MAUNG
MYA DIN
v.
K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

1939

MAUNG
MYA DINv.
K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

It appears to me that this principle is referred to and followed in *R.M.V.V.M. Chettyar Firm v. M. Subramaniam and another* (1).

In that case Chari, J. reviewed certain cases of other Courts in India dealing with this question. In some of the cases it was decided that the words such as "in like manner as the recovery of arrears of land revenue" indicated only that the same procedure as in the recovery of land revenue should be followed and nothing more. Other cases held that the phrase "as if they were arrears of land revenue" would have a similar meaning with the above phrase. In *Sankaran Nambudripad v. Ramaswami Ayyer and another* (2), which was followed in the Rangoon case it was held that the words "as if they were arrears of land revenue" do not, by themselves show, that the intention of the Legislature was merely to regulate the procedure to be followed in such cases. Whether it was intended to attract also the provision relating to the substantive right of a purchaser depended upon a consideration of the wording of the Act and the nature of the tax.

In the case before Chari J., which was a case relating to the recovery of arrears of taxes due to the City of Rangoon under the City of Rangoon Municipal Act, the tax in question was one which was held to be in the nature of land revenue. Chari J. therefore held that it was open to the authorized officer 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 under these sections the provisions of section 48 of the Act would apply.

It is obvious that in the present case no such analogy can be drawn.

In the course of his judgment Chari J. remarked that if the words in the City of Rangoon Municipal Act

(1) (1927) I.L.R. 5 Ran. 458.

(2) (1918) I.L.R. 41 Mad. 691

“as if they were arrears of land revenue” were construed as attracting the operations of sections 46 to 48 of the Land and Revenue Act to all municipal sales, then the anomalous result would be that the Rangoon Municipality was in a position to recover its dues in a manner in which, under the Revenue Act itself, ordinary revenue officers could not recover : that is, the operation of section 46 of the Act would be enlarged in the case of sales under the Municipal Act.

In a somewhat similar method it may be argued that it would be anomalous if sums due to the liquidator of co-operative societies could be recovered by sales which attracted the operation of sections 45 to 48 of the Land and Revenue Act. For the result would be that the liquidator would be in a position to have his dues recovered in a manner in which, under the revenue Act itself, ordinary revenue officers could not recover.

It appears to me that there cannot be any question that if the strict meaning of the words employed in section 51, *i.e.* “in the same manner as arrears of land revenue”, is applied then, in such a case as the present one, it is impossible for the revenue officer to proceed under sections 46 following of the Land and Revenue Act. Although he purports to do so his proceedings are entirely without authority and cannot be deemed to have been carried out in pursuance of those sections. Least of all can the provisions of section 48 come into effect and the purchaser be deemed to have acquired the right offered by the sale free from all encumbrances created over it. It is obvious that all that Maung Mya Din could buy at the sale was the right, title and interest of Ma Mya in the property sold, and that the respondent, the plaintiff firm, cannot be deprived of its rights under its mortgages.

It has been urged that in virtue of the transfer of the leases of the site to the appellant by the Collector

1939

MAUNG
MYA DIN
K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

1939

MAUNG
MYA DIN

v.

K.P.A.P.
CHETTYAR
FIRM.

MACKNEY, J.

the appellant has become the owner of the property. I fail to see how this can affect the validity of the respondent's mortgages.

It is to be noted that under section 29 of the Town and Village Lands Act whenever any document affecting the title or right to possession of any land in a notified town shall be registered under the Registration Act, the officer registering the same shall send to the revenue officer concerned a true copy of the entries in the indexes kept under the said Act relating to such document. The respondent firm, therefore had every reason to believe that the Collector, and consequently all persons dealing with the leases, would be aware of the mortgage. (See also section 71 of the Transfer of Property Act.)

It has been urged that the appellant is entitled to the benefit of the improvements that he has effected in the property. This contention overlooks the provisions of section 70 of the Transfer of Property Act.

The appellant cannot rely on section 51 of that Act as it is obviously inappropriate in such a case as the present one. It might be noted that this plea was never raised in the trial Court and although it seems to have been referred to in the fifth ground of appeal in the District Court that ground does not appear to have been argued before the learned Judge.

This appeal is therefore dismissed with costs.