

# SUPREME COURT OF INDIA

Vemula Siviah Naidu

Vs.

State of A.P.

C.A.No.721 of 1981

(K. Ramaswamy and G. T. Nanavati, JJ.)

28.11.1996

## ORDER

1. The appellant is the auction-purchaser of 5.86 acres in Peddayyasamudram village in Nellore District. The said land was brought to sale on November 2, 1967 to realise the debt due to the Govt. from one K. Sankaraiah, the brother of K. Radhakrishnaiah, the respondent-plaintiff. The appellant had purchased the same in the said auction. he was granted the sale certificate on April 31, (sic) 1969 under Ex. B-1. Later, the second respondent, Radhakrishnaiah filed the suit for setting aside the sale. The trial Court discussed the suit. On appeal, the District Judge confirmed the same. In Second Appeal No. 632/77 by judgment and decree dated February 28, 1979, the learned single Judge of the High Court of Andhra Pradesh decreed the suit. Thus, this appeal by special leave.

2. The admitted facts are that K. Sankaraiah, the debtor and the second respondent are members of the joint family. At a partition dated July 28, 1954 under Ex. B-13, Radhakrishnaiah was granted a greater share since he had undertaken to discharge all the liabilities on the joint family properties including the debt contracted by Sankaraiah from the Government under a mortgage. The contention raised by the second respondent, which was found acceptable by the High Court, was that since he was not a defaulter within the meaning of Section 5 of the A.P. Revenue Recovery Act, 1894 (1864) (for short, the 'Act'), the property belonging to the respondent could not be brought to

sale. In support thereof, the learned Judge has relied upon another judgment of that Court in *Chatrati Sriramamurthi v. Official Receiver Krishna* (1957) 1 Andh WR 216: (AIR 1957 Andh Pra 692). The question is : whether the view taken by the High Court is correct in law? The learned District Judge recorded a finding, which was also accepted by the High Court, that the properties are joint family properties hypothecated to the Government for securing the loan by Sankaraiah. The second respondent under Ex. B-13 had taken bulk of the properties including the suit schedule property allotted to him in the partition with an undertaking "to discharge all the liabilities of the erstwhile joint family including the loan obtained from the Government". Thus, the question arises: whether the second respondent is a defaulter within the meaning of Section 5 of the Act? Section 5 reads as under:

"Whenever revenue may be in arrears it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process by the sale of defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided."

3. It is to remember that the word 'defaulter' connotes the person who is liable to discharge the debt. In view of the fact that the joint family property was hypothecated to the Government for recovery of the debt taken by K. Sankaraiah and the second respondent had undertaken to redeem the debt taken by Sankaraiah and the partition was subject to the above undertaking, the property is liable to be proceeded for recovery of the debt contracted upon it. As a consequence, the second respondent is a defaulter for the purpose of Section 5 of the Act.

4. Shri. A. Subba Rao, learned counsel appearing for the second respondent, contended that the word 'defaulter' would be understood to be the person who has incurred the liability. Though Radhakrishnaiah, had undertaken the liability under Ex. B-13, for the purpose of Section 5, he cannot be considered to be a defaulter, but R. Sankaraiah was the defaulter; therefore, the property had by the respondent at a partition is not liable to sell. In support thereof, learned counsel placed reliance on the judgment of Madras High Court in *C. Dhanalakshmi Ammal v. Income-tax Officer, Madras*, 31 ITR 460: (AIR 1957 Madras 376). The facts therein are that the husband of the petitioner therein was the defaulter of arrears of income-tax. The property belonged to his wife who was sought to be proceeded against for recovery of arrears of income-tax due by the assessee, on the premise that the wife is only a benamidar and the real owner of the property was the husband, the defaulter. The Madras High Court had held that since the husband is the defaulter, the property, cannot be straightaway proceeded with since they stand in the name of the wife, unless appropriate steps are taken to ensure first that the wife is only a benamidar and the real owner of the property is the husband. We need not consider the correctness of the view taken by the Madras High Court for the reason that the facts therein are entirely different from the facts in this case.

5. It is seen that the property which is proceeded with for recovery of the debt due to the Government is the joint family property charged to the debt due by Sankaraiah. The respondent-

Radhakrishnaiah had undertaken to discharge the liability under Ex. B-13. Therefore, he assumed the responsibility as a defaulter under Section 5. In consequence, the property is liable to be proceeded with since he had not discharged that liability. The sale conducted on November 2, 1967, therefore, is in accordance with the provisions of the Act. The sale certificate was legal and valid. Accordingly, Ex. B-1, the sale certificate dated April 31, (sic) 1961 (1969) binds, the second respondent.

6. The appeal is accordingly allowed. The judgments and decree of the High Court stand set aside. The suit stands dismissed. No costs.

Appeal allowed.