

(1955) 01 KL CK 0011

High Court Of Kerala

Case No: Civil Revision Petition No. 325 of 1954

Govindan Sankaran

APPELLANT

Vs

Sankaran Achuthan

RESPONDENT

Date of Decision: Jan. 3, 1955

Citation: AIR 1955 Ker 234

Hon'ble Judges: Subramonia Iyer, J

Bench: Single Bench

Advocate: C.M. Kuruvilla, for the Appellant; K.N. Parameswaran Pillai, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Subramonia Iyer, J.

The petitioner in this revision is the defeated petitioner in the court below for redelivery of immovable property delivered to the respondent by court pursuant to a sale certificate in his favour. The suit which led to the sale was filed in Makaram 1108 which ended in a decree in the same month the next year. The sale was held in March 1951 and delivery was given in September 1952.

2. The petitioner claims to be in possession pursuant to a sale in his favour given by the 11th defendant in the year 1110 (Ex. D) for a consideration of Rs. 195, the bulk of which namely, Rs. 187-8-0 was amount due to the petitioner under Ex. III which is a transfer in the year 1104 of the right of the 12th defendant to receive money by way of a non-possessory charge under a deed of partition of the year 1103 (Ex. II) in the tarwad to which the property belonged. At that partition the properties were allotted to the 11th defendant with the aforesaid charge in favour of the 12th. The petitioner urges that as per the aforesaid transactions culminating in the sale to him of the year 1110 which though after the decree was long before the sale and delivery to the respondent, he is entitled to be in possession of the property.

This contention cannot be accepted as the suit which led to the sale in the court auction was for the grant and enforcement of a charge on the property for the rent due to the plaintiff who was the possessory mortgagee thereof and who leased it back to the mortgagor. The charge asked for was granted by the decree. The charge that the petitioner claims though prior is, as already stated, non-possessory. His right to that charge stands unaffected by the decree, sale and delivery. The transfer of possession by the judgment-debtor, 11th defendant to the petitioner was pending the suit in which the charge on property asked for was granted. The principle of "lis pendens" vitiates the transfer of possession. That principle applies not only to a case where the plaintiff seeks to enforce a pre-existing charge but also to a case in which the plaintiff asks for the grant of a charge. The transferee "pendente lite" takes the transfer from a defendant to the action subject to the rights granted by and enforced under the decree. The petitioner, therefore, was not entitled to resist delivery to the respondent purchaser.

3. Learned counsel for the petitioner contends that under Rule 289 of the Travancore Civil Courts Guide, 1120, corresponding to Rule 208 of the Travancore Civil Courts Guide 1099 provides for the issue of a notice to the judgment-debtor or other person in possession of property before it is delivered to a purchaser or decree-holder and the provision for such notice is, as held in 1944 Trav LR 416 (A), mandatory. Neither the rule nor the decision relied upon would help the petitioner because the rule applies only to a case where the party sought to be dispossessed is entitled to resist delivery and the decision cited only decides that in a case to which the rule applied, its provisions are mandatory. If a person is not entitled to resist delivery he is not entitled to notice under the rule and the mandatory character of the rule does not help him. The absence of notice to the petitioner in this case who as already found is not entitled to resist delivery is immaterial.

4. The order of the court below directing delivery of property and the delivery thereof pursuant thereto cannot be questioned by the petitioner. This Civil Revision Petition, therefore, fails and is dismissed with costs.