

*Judgement of the Lords of the Judicial Committee
of the Privy Council on the appeal of Pettachi
Chettiar and others v. Sangili Veera Pandia
Chinnathambiar, from the High Court of
Judicature at Madras; delivered March 10th,
1887.*

Present :

LORD WATSON.

LORD FITZGERALD.

SIR BARNES PEACOCK.

THIS is an Appeal from a decision of the High Court at Madras affirming the decision of the Lower Court upon the first issue in the suit. That issue was:—"What is the nature of the "right, title, and interest acquired under the "sale certificate issued by this Court to the "purchaser?"

The first Court, after considering all the facts and the evidence in the case, came to the conclusion that all that was offered for sale, and all that was purchased under the sale was the interest which the father of the Defendant had at the time of his death.

The High Court stated the facts very fully; they considered them very maturely, and they reviewed them very carefully, and they came to the conclusion that the decision of the Judge of the first Court was correct.

There were two concurrent findings of the Courts. It may be said that they were not upon a mere question of fact, but on a question of mixed law and fact. As regards the fact, both Courts came to the conclusion that what was offered for sale, and what was intended by the purchaser to be purchased, was the right and

interest which the father had at the time of his death.

There is no doubt that when the execution was issued, and the attachment made, in the time of the father, the proclamation expressly stated that all that was to be sold was the life interest of the father. At page 220 of the Record it will be found that a petition was put in by the creditor in one of the suits, praying that that notification might be altered. He said:—"I pray therefore that in conformity with
" the above sections of the Civil Procedure Code,
" a fresh advertisement may be made expunging
" the words 'during his lifetime.'" Those words having been put into the proclamation that nothing was to be sold except the interest which the father had in his lifetime, one of the creditors asked to have those words expunged. But the Court made this order (page 221):—"The
" advertisement is that the right, title, and in-
" terest of the said Defendant in the estate
" during the term of his life be sold, the Judge-
" ment having distinctly declared that only such
" is liable for this decree debt. This prayer
" cannot therefore be granted." At that time, in the father's lifetime, it was expressly decided by the Judge that what was intended by the decree to be sold, and what could be sold under the decree, was only the interest of the father during his lifetime. The sale was postponed at the instance of the creditors, in consequence of the father's illness. They said:—"As the estate is
" to be sold only for the father's interest during
" his lifetime, the sale will not fetch so much
" during his illness as it would if he were in a
" better state of health," and therefore they asked to have the sale postponed in consequence of the illness of the father. The sale was postponed. If it had taken place during the lifetime of the father, the purchaser would have obtained

all that the father was entitled to during his life, and that only, and he would have been entitled to possession of the estate during the father's lifetime, and to receive the rents which were then in arrear.

The father died. No fresh attachment was made. The sale was to take place after the father's death upon the attachment which had been made during his lifetime. The proclamation stated that the property was to be sold only for the interest of the father; but after the father's death, as it appears, the Court allowed the son, notwithstanding the attachment (because it was only for the life interest of the father) to take possession of the estate, stating that all that was to be sold was the life interest of the father, namely, not then the right to the possession of the estate, but the right to receive the rents in arrear.

The property was put up for sale, and it is said that the proclamation was ambiguous, that it did not state that the sale was merely for the life interest of the father, but that it was a sale of only the interest of the father. And it is contended on behalf of the Appellants that by the change of the terms the purchasers necessarily thought that they purchased the whole interest in the estate. But, even if the fresh proclamation was ambiguous, the purchasers, if they had made the ordinary inquiry which they ought to have made, would have discovered that all that was intended in the first proclamation was the life interest of the father in the property which had been attached, and that the same interest was intended to be sold under the second proclamation.

The purchaser purchased for a small sum, about Rs. 12,000, but he had not the money to pay. He paid merely a deposit. He sub-

sequently conveyed to the creditors themselves. There can be no doubt, in their Lordships' minds, that when he purchased he was purchasing benamee for those creditors, and although they might have purchased in their own names, they did not do so, because, if they had done so, they would have purchased, having themselves the knowledge of all that had previously taken place. They therefore allowed the property to be purchased in the name of a clerk of one of the execution creditors in order that it might appear that it was purchased by a man who had no notice of what had taken place previously.

It is unnecessary to go into the question whether the estate came from the paternal ancestors, or in other words whether it was ancestral estate or not. The learned counsel, in a very ingenious argument, endeavoured to show that a difference existed in consequence of its being an estate which came from the maternal and not from the paternal grandfather, and consequently that it was not ancestral estate. But that makes no difference in the present case. If the whole estate could have been put up for sale it was not put up. It is not a question of what the Court could have done, or what they ought to have done, but what they did, what was put up for sale, and what was purchased. If what was put up for sale was merely the estate which the father had in his lifetime, then what the purchaser purchased was only that interest.

The High Court having carefully reviewed the whole of the evidence, and the whole of the documents, came to the conclusion that the first Court was right in finding that all that was intended to be sold, and all that was sold was the life interest of the father, and not the whole interest in the zemindary.

Their Lordships entirely agree with the conclusion at which the High Court has arrived, and they will therefore humbly advise Her Majesty to affirm the decree of the High Court, and the Appellant must pay the costs of the appeal.

