

**(1913) 12 MAD CK 0015**  
**In the Madras High Court**

|                                        |    |            |
|----------------------------------------|----|------------|
| A Subbarayudu and Others               | Vs | APPELLANT  |
| T. Lakshminarasamma (Died) and Another |    | RESPONDENT |

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**Date of Decision :** 16-12-1913

**Acts Referred:**

**Citation :** (1915) ILR (Mad) 775 : (1914) 1 LW 59

**Hon'ble Judges :** Spencer, J; Sadasiva Ayyar, J

**Bench :** Division Bench

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**Judgement**

Sadasiva Ayyar, J.—This is a petition by the judgment-debtor under Order XXI, Rule 89 of the CPC (corresponding to but differing

substantially in its wording from the old Section 310-A) to have the Court auction sale of a property (which belonged to him on the date of such

auction sale) set aside.

2. After the Court auction sale, however, he sold away all his rights to a stranger and on the date of this application made by him under Order

XXI, Rule 89, he had no title in the property. Could such a person be allowed to make an application under the new Code to set aside the sale?

3. Now, an elementary principle of the law is that unless a statute clearly allowed it, a man who has no right in a property on the date of filing a suit

or making an application in respect of that property cannot be allowed to file that suit or make that application. The natural meaning, therefore, of

the words in Order XXI, Rule 89, "any person either" owning such property or holding an interest therein, etc, "is" any person owning such

property or holding an interest therein on the date of making the application." The judgment-debtor would continue to own the property sold in

Court auction on the date of the application under Order XXI, Rule 89, if both of

the following conditions are fulfilled, (1) that the Court auction sale has not been confirmed and he has not therefore ceased to be the owner (this condition would be usually fulfilled as the application under Order XXI, Rule 89, should be made within thirty days and the sale is confirmed only after thirty days) and (2) that the judgment-debtor has not before the date of the application conveyed away all his rights to a stranger. The judgment-debtor in the present case did not own the property and had no interest in it on the date of the application and hence his petition was rightly (it seems to me) dismissed by the Appellate Court.

4. Reliance is however placed on *Narain Mandal v. Sourindra Mohan Tagore* I.L.R., (1905) Calc., 107, *Maganlal v. Doshi Mulji* I.L.R., (1901) Bom., 631 and other similar cases for the petitioner. In the first place, those cases were decided under the old Code. The judgment-debtor was held in those cases to continue to come within the meaning of the words (in Section 310-A of the old Code) "person whose immovable property has been sold" in Court auction even after he had himself voluntarily sold away his properties. It is unnecessary to say whether those cases were rightly decided (I beg leave, with great respect, to express some doubt as to their correctness) because we have to construe the different words in the new Code.

5. I think that we ought to follow the ruling of this Court in *Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair* (1913) M.W.N., 101 which shows that the subsequent purchaser from the judgment-debtor is entitled to apply under Order XXI, Rule 89. If the subsequent purchaser is so entitled, why should the judgment-debtor who has no interest be also permitted to apply in disregard of the plain rule of jurisprudence already referred to by me?

6. *Ishar Das v. Asaf Ali Khan* I.L.R., (1912) All., 186 shows that such a judgment-debtor cannot apply under Order XXI, Rule 89, though I am not prepared to agree (with great respect) with Mr. Justice Chamier that even the subsequent purchaser cannot come in under Order XXI, Rule 89, as that opinion is opposed to the ruling in *Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair* (1913) M.W.N., 101.

7. Even if I am wrong in the above view, I am clearly of opinion that the lower Court did not act illegally or beyond its jurisdiction or act with

material irregularity in arriving at the above conclusion and hence that we are not entitled to interfere u/s 115 of the Civil Procedure Code. This

view of mine, as regards the applicability of Section 115 is, no doubt, opposed to the view held in 1913 Madras Weekly Notes, 101. I am unable

(with great respect) to hold that because a Court by falling into an error of law dismisses a suit or an application on the ground that the particular

plaintiff or particular applicant has not got the right of suit or right of application claimed by him, therefore, that Court has declined to exercise

jurisdiction over the suit or application. I therefore respectfully differ from Anantha Lakshmi Ammall v. Kunnanchankarath Sankaran Nair (1913)

M.W.N., 101, so far as that case decides that the High Court could interfere u/s 115 of the Civil Procedure Code.

8. In the result, this revision petition is dismissed but as we have allowed costs to the respondent in the connected appeal we make no order as to

costs in this petition.

Spencer, J.

9. I feel no doubt whatever that a judgment-debtor who, after a Court auction of his immovable property has been held but before it has been

confirmed, parts with his entire interest in such property in favour of a private purchaser is not a person "either owning such property or holding an

interest therein by virtue of a title acquired before such sale" at the time of his applying to have the sale set aside, although he may be a "person

whose immovable property has been sold under this chapter" within the meaning of Section 310-A of the Code of 1882 [see Maganlal v. Doshi

Mulji I.L.R., (1901) Bom., 631.

10. In this respect I consider that Ishar Das v. Asaf Ali Khan I.L.R., (1912) All., 186 was rightly decided. I would follow that decision so far as it

decides that a judgment-debtor who has divested himself of all his interest in the property has no locus standi to apply under Order XXI, Rule 89,

to have the sale set aside.

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