

(1937) 10 MAD CK 0038
In the Madras High Court

A.R. Ramanuja Mudaliar

APPELLANT

Vs

L.C. Sundara Varadachariar and Others

RESPONDENT

Date of Decision : 21-10-1937

Acts Referred:

Citation : AIR 1938 Mad 176 : (1937) 46 LW 925 : (1937) 2 MLJ 926

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The Sundara Shanmuga Vilas Prize Chit Fund, a company registered under the Indian Companies Act, is being wound up in the Court of the District Judge of Chittoor as the result of a compulsory winding up order passed by this Court. This Court appointed three official liquidators, who on taking over charge of the assets came to the conclusion that one asset, a decree in favour of the directors of the company, should be sold by auction as it would be too expensive to undertake execution proceedings. They accordingly applied to the District Judge for directions u/s 183 of the Act and he ordered the decree to be sold by auction. In accordance with this order an auction was held on the 1st November, 1934, and the appellant bid Rs. 25. As there was no higher bid he was declared to be the purchaser. On the 5th November, 1934, the three liquidators executed a deed assigning the decree to the appellant who on the 17th January, 1935, applied to be brought on the record and to have leave to execute the decree. Before he could take advantage of his purchase, one of the liquidators applied to the District Judge for directions in order to get the sale set aside. By an order dated 13th February, 1936, the District Judge set aside the sale as he considered that there were good grounds for thinking that the sale was not properly advertised and on general grounds he thought that a doubtful asset should not be sold. It is from this order that the present appeal has been preferred.

2. It is clear that the learned District Judge had no power to set aside the sale. The decree was sold by auction and the appellant was the highest bidder. The

appellant having become the purchaser, the official liquidators with the sanction of the Court assigned the decree to him. In these circumstances the Court had no right to set aside the contract." The principles of, Order 21, Rule 90 of the CPC do not apply, but even if they did there would be no ground for setting aside the sale. It is not suggested that the appellant was a party to any fraud. The appellant having bought the decree is entitled to the benefit of it, and the order of the learned District Judge must, therefore, be set aside. Having succeeded the appellant is entitled to costs which will be paid out of the assets of the company.