

(1918) 03 MAD CK 0020
In the Madras High Court

Aramproth Illoth Vasudevan Moosad, Karnavan and Manager
of his Illom

APPELLANT

Vs

Kattadi Moothedath Ittirarichan Nair

RESPONDENT

Date of Decision : 13-03-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92

Citation : 45 Ind. Cas. 46 : (1918) 7 LW 547 : (1918) 34 MLJ 412

Hon'ble Judges : John Wallis, C.J.; Spencer, J.; Sadasiva Aiyar, J

Bench : Full Bench

Judgement

John Wallis, C.J.—It is strange that in none of the cases in this Court dealing with the ottidar"s right of preemption in Malabar, Cheria

Krishnan v. Vishnu ILR (1882) Mad. 198 Vasudevan v. Kesavan ILR (1884) Mad 309, Kanharankutti v. Uthotti ILR (1890) Mad. 490 Ammotti

Haji v. Kuhayen Kutii ILR (1892) Mad. 480, Kanaran Nair v. Raman Nambiyar (1893) 4 M.L.J. 46 or Mammali v. Kunhipakhi Haji ILR (1912)

Mad. 67 has the question been considered, how far such a right can be exercised in the case of court and revenue sales consistently with the

provisions of the statute law regulating such sales. Both in Bengal and in Northern India, where cases of pre-emption are much more numerous

than they are here, it appears to be well settled that it cannot in the absence of statutory provision being made for its exercise, as in the case of

some revenue sales in the United Provinces. In Baij Nath v. Sital Singh ILR (1890) All. 224 Mahmood, J., after reviewing the authorities, states;

It may therefore be taken as a rule of law settled by a long and uniform course of decision that a compulsory sale, such as a sale in executions of a

decree or a sale under an authoritative order of the revenue authorities for

arrears of Government revenue, does not render preemption enforceable, whether such right is claimed under Muhammadan Law, the terms of the *Wajib-ul-arz*, or on the ground of local custom or private contract; but that such compulsory sales being the creation of statute law do furnish occasion for the exercise of the pre-emptive right where such right is provided subject to the rules and restrictions prescribed by these legislative enactments themselves." And he goes on to refer to the provisions of Section 310 of the Code of 1882 and other local statutory provisions. The other learned Judges did not differ from Mahmood, J., on this point, but on the question whether such special statutory provisions had been made in the particular case, and the law as laid down by him was accepted as settled in *Kanhai Lal v. Kalka Prasad* ILR (1905) All. 670

2. On a careful consideration of the question I agree with the law as laid down by Mahmood, J. I find it quite impossible to reconcile the statutory provisions of the CPC as to sale in execution of decrees with the *ottidar's* right of preemption as now claimed. Section 60 of the Code makes Immovable property belonging to the judgment-debtor liable to attachment and sale in execution of a decree, and Section 65 provides that, where property has been sold in execution of a decree and the sale has become absolute, it is to vest in the purchaser. Under Order 21, Rule 92 it becomes absolute where no application is made under Rule 89, 90 or 91 of the Code of Civil Procedure, 1908 or where such application is made and disallowed. The rules in question do not provide for the exercise of a right of pre-emption.

3. There is a very limited recognition of the right of pre-emption in Rule 88, and if any further recognition had been intended, it would have been expressly provided. Having regard to the course of the decisions and the importance of the right of pre-emption in Northern India, I can only infer that the omission to make such provision was deliberate, In *Manchester Ship Canal Company v. Manchester Race Course Company* (1901) L.R.

2 Ch. 37 it was contended on the one side and not denied on the other that a right of preemption was quite incompatible with a sale by auction.

4. In these circumstances we are bound, in my opinion, even at this late stage to uphold the objection taken and to answer the question in the negative.

Sadasiva Aiyar, J.

5. I entirely agree and have nothing to add.

Spencer, J.

6. I also agree.