

(1991) 01 MAD CK 0079
In the Madras High Court

Arokiadas and Others

APPELLANT

Vs

Arokiasamy and Others

RESPONDENT

Date of Decision : 25-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : (1991) 1 LW 255 : (1991) 1 MLJ 409

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—This revision is directed against the order of the Executing Court dismissing an application under Order 21, Rule 89 of the

CPC for setting aside a sale held on 9.3.1989. The case of the petitioners was that they had purchased the property from the judgment-debtor on

19.2.1989 under two sale deeds and they were depositing the entire amount as prescribed in Order 21, Rule 89 of the Code of Civil Procedure.

The deposit was made on 23.3.1989. On the same day, the application was also filed. The objection raised by the respondents was that the sale in

favour of the petitioners was sham and nominal and it was a fraudulent transaction and they were not entitled to file an application under Order 21,

Rule 89 of the Code of Civil Procedure. The Executing Court has accepted that contention and dismissed the application.

2. In an application, under Order 21, Rule 89 of the Code of Civil Procedure, there is no question of the Court considering whether the sales in

favour of the petitioners were sham and nominal or fraudulent. Under the Rule, any person claiming an interest in the property sold can file an

application to set aside the sale on his depositing the amount mentioned in the Rule. Here, the petitioners are claiming under two registered

documents dated 19.2.1989. If they are sham transactions, then the deposit which is made by them can be treated as one on behalf of the

judgment debtors. If, on the other hand, they are real transactions, then, the petitioners are entitled certainly in their own right to make deposit

under the Rule. The questions which have been considered by the Executing Court did not at all arise for consideration. He ought not to have

discussed the matter. Once, it is found that the entire amount due under Order 21, Rule 89 of the CPC has been deposited within the time

prescribed by law, by a person satisfying the description contained in the rule, the Court ought to have set aside the sale.

3. Consequently, the civil revision petition is allowed. E.A. No. 268 of 1989 is allowed. The Court auction sale dated 9.3.1989 is set aside. There

will be no order as to costs. The executing Court shall pass the consequential orders regarding payment out etc.