

(1923) 02 MAD CK 0039
In the Madras High Court

Arumalla China Subba Reddi and Another	APPELLANT
Vs	
Vasireddi Jayaramayya and Others	RESPONDENT

Date of Decision : 05-02-1923

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 90

Citation : (1923) 17 LW 680

Hon'ble Judges : Odgers, J

Bench : Single Bench

Judgement

Odgers, J.—In this case the petitioners are the auction-purchasers and decree-holders of certain property sold in Court-auction on the 14th September 1920. It appears that the plaintiff and certain others in Original Suit No. 319 of 1917 on the file of the Additional District Munsif's Court of Guntur made an "arrangement" (as it is called) on the 26th May 1915 that they should purchase the entire property of the judgment-debtor and distribute the proceeds rateably among his creditors. On the 10th June 1917, the petitioners here attached the whole of the properties, the subject of the aforesaid arrangement. On the 2nd September 1919, it is said, there was a conveyance in favour of the respondents in pursuance of the agreement of 1915. A suit was instituted to stop the petitioners before me from proceeding in execution of their decree in Original Suit No. 319 of 1917 and on the 13th September 1920 a temporary injunction was obtained against them for that purpose. It was dissolved on the next day, 14th September 1920, on which day, also, the Court-auction was held and the petitioners were declared to be the purchasers. On the 25th September 1920. application was made by the respondents here to set aside the sale. This application was made on the ground that one of the respondents to the petition had fraudulently deceived the Court by having the property put up again on the 14th September 1920 without a fresh proclamation for sale. It was also said that the property which was worth about Rs. 1,000 was knocked down for Rs. 600. The interest which it is necessary that he should allege under Order XXI, Rule 90, Civil Procedure Code, before he can show a locus standi to have the sale set

aside is the agreement of the 26th May 1915 and the conveyance of 2nd September 1919. In the application dealt with by the learned District Munsif he found that no fraud had been proved nor was there any irregularity in the conduct of the sale and that the adjournment of the sale was justified and was authorised by Order XXI, Rule 69(1). It appears from Sub-section (2) of that Order that, so long as the adjournment is made for not longer than seven days, no fresh proclamation is necessary." The petitioners examined no witnesses and offered no evidence and their petition was dismissed. On appeal to the District Judge he apparently held that the District Munsif had decided the petition on the preliminary point as to their interest, the learned District Munsif having said, "It is not at all clear that petitioners are persons entitled to apply under this provision of law." It is, however, clear to my mind that the District Munsif went into the merits, and it was only after his decision on the merits that he made this observation as to interest. The District Judge, however thought that the interests of the petitioners were affected or might be affected by the sale. The District Munsif having found that the petitioners had no interest, could take no other course than to dismiss the petition, no opportunity having been given to the petitioners to adduce evidence. It is somewhat remarkable that the petitioners themselves, when the case came up before the District Munsif's Court on the 25th October 1920, requested an adjournment till the following day when the petition was heard.

2. As to the question of the respondents' interest, it has been argued before me by Mr. Raghava Rao that the respondents have no interest, on three grounds. First, that the agreement of the 26th May 1915, creates no interest as it conveyed no interest in real property within Section 54 of the Transfer of Property Act to the respondents who claim to be trustees under that agreement for the benefit of the creditors, and persons entitled under a contract for the sale of Immovable property are, according to the authority of *Mahadeo ChintamanWadekar v. Vasudev Ji Kirtikar* 23 B. 181 : 12 Ind. Dec. (N.S.) 119, not persons entitled to apply u/s 310(a) Of the Civil Procedure Code, corresponding to the present Order XXI, Rule 89.

3. The second ground is that the conveyance is subsequent to the petitioner's attachment and, therefore, cannot operate to pass any property which is the subject of that attachment. It is clear that the attachment was on the 10th June 1917, and the conveyance on the 2nd September 1919. Section 64, Civil Procedure Code, declares that any such transfer of property attached shall be void as against all claims enforceable under the attachment and the case in *Girija Nath Roy Chowdhury v. Upendra NathPal* 20 Ind. Cas. 241 holds that the auction-purchaser stood in this position with regard to Section 276 of the old Code which corresponds to section 64 of the present Code.

4. Thirdly, if the conveyance had been prior to the attachment the respondent would equally have had no locus standi as their interests were not affected. This seems to be established by the cases in *Subba-rayadu v. Pedda Subbarazu* 16 M.

476 : 5 Ind. Dec. 1038 and Fotick Chunder Dey Sircar v. Foley 15 C. 492 : 7 Ind. Dec. 912. The Full Bench case of Sundaram alias Mytheenbibbi Vs. Mamsa Mavuthar, Sheikkasim Mavuthar, is authority for the proposition that the High Court can interfere in revision if an application under Order XXI, Rule 89 has been dismissed on the ground that it was made by a person not entitled to apply. I assume that the converse holds good. It is perhaps unfortunate in this case that the respondents have not appeared. But I have had the advantage of a full argument on behalf of the petitioners and on a consideration of the points advanced by the learned Vakil I think they ought to succeed. I must, therefore, come to the conclusion that this is a case in which I ought to interfere in revision and set aside the order of the learned District Judge of 10th September 1921. This I accordingly do.

5. The petitioners must have their costs.