
(1955) 03 KL CK 0006
In the High Court Of Kerala
Case No : A.S. No. 854 of 1951

Chacko Pyli

APPELLANT

Vs

Iype Varghese

RESPONDENT

Date of Decision : 14-03-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 22, Order 21 Rule 66, Order 22 Rule 10, Order 22 Rule 2, Order 22 Rule 3
Limitation Act, 1963 — Article 166, 181, 18
Transfer of Property Act, 1882 — Section 52
Travancore Civil Procedure Code, 1100 — Order 21 Rule 20, Order 21 Rule 64, Order 21 Rule 87
Travancore Limitation Act, 1908 — Article 151, 165

Citation : (1955) 03 KL CK 0006

Hon'ble Judges : Koshi, C.J;Vithayathil, J;Subramonia Iyer, J

Bench : Full Bench

Advocate : T.S. Krishnamurthy Iyer, for the Appellant; K.P. Abraham and K.T. Ninan, for the Respondent

Judgement

Subramonia Iyer, J.—This case is before a Full Bench under the following order of reference made by a Division Bench of which two of us were members:

The erstwhile Cochin State obtained a decree dated 26-4-1110 in O.S. 1011 of 1107 on the file of the Muvattupuzha Munsiff's Court for money charged upon certain items of immovable property against three Defendants who are Christian brOrs. . The first Defendant executed a deed of settlement which is marked as Ex. III on 11-2-1113 creating an interest in praesenti in one Iype Varghese along with himself. The first Defendant died in the year 1116. On 23-11-1116 an execution petition was presented. More than one year having elapsed after the previous application, notice under Order 21, Rule 20. Travancore CPC corresponding to Rule 22 of the Indian Code was ordered. Notices were served upon Defendants 2 and 3. The notice issued to the first Defendant was returned unserved with an endorsement that he was dead. The Court posted the case to 30-2-1119 for impleading the legal representatives of the deceased first

Defendant. Not having taken steps in that regard till that date, the decree-holder applied for time on 30-2-1119. That application did not find favour with the Court and it was rejected. The next execution petition was filed on 29-5-1119. Therein the decree-holder stated that Defendants 2 and 3 are the legal representatives of the deceased first Defendant. There was a prayer for notice under Order 21, Rule 20. No notice, however, under that rule was issued but notice was issued for settlement of the proclamation of sale, under Order 21, Rule 64, Travancore CPC corresponding to Rule 66 of the Indian Code. Pursuant to this execution petition the Court sold an extent of 1 acre and 25 cents in Item. 2 in the decree on 25-12-1119. Only Defendants 1 and 2 were interested in this property. On 27-1-1120 the sale was confirmed. On 27-5-1120, two petitions were filed for setting aside the sale, one by the third Defendant, and the other by the said Ipe Varghese who claimed under the settlement made by the deceased first Defendant as his legal representative. Both the applications were allowed by the Court below by one order dated 7-3-1951.

2. Learned Counsel for the Appellant says that one appeal happened to be presented against the order upon the two petitions because one common order was passed disposing of both of them. Whether this is right or not and if not, what should be its consequence and whether and in what manner the defect could be cured are all matters for consideration.

3. The Court below set (sic) de the (sic) on the following grounds:

1. That Iype Varghese is the only legal representative of the deceased first Defendant and the sale conducted without him as a party on the record is a nullity.

2. That notice under Order 21, Rule 20 which was prayed for and order was not issued and without the issue of such notice, the Court had no jurisdiction to sell the property.,

3. That the sale of property being in one lot, the defect that attaches to the interests of the first Defendant would vitiate the sale even, in respect of the interests of the 2nd Defendant, and

4. That the sale being a nullity, an application to set it aside need not be presented within 30 days as required by Article 151, Travancore limitation Act, but could be presented within 3 years under Article 165 of the same Act.

4. Mr. Krishnamoorthi Iyer, learned Counsel for the Appellant seeks to have that order set aside on the ground that Defendants 2 and 3 are and are the only legal representatives of the deceased first Defendant and that Iype Varghese is no legal representative, and that, in the alternative, assuming that Iype Varghese was the legal representative of the first Defendant, the decree-holder having bona fide believed that Defendants 2 and 3 are the legal representatives and proceeded with the execution with them on record on that basis, the proceedings in execution are proper and effective and the sale perfectly valid. In support of

this alternative position, he relies upon, a decision of this Court in - "Acha v. Maravanthuruthu Pakuthy" AIR 1950 TC 1 (A). This is as regards ground No. 1 depended upon by the Court below.

5. As regards ground No. 2 Mr. Krishnamoorthi Iyer contends that the non-issue of the notice under that rule does not affect the jurisdiction of the Court to sell the property and that if at all it would only be an irregularity which would not render the sale void but only voidable and to avoid which an application has to be presented within 30 days under Article 151, Travancore Limitation Act. On the question whether the issue of notice under Order 21, Rule 20 is a factor affecting the jurisdiction of the Court, there is a keen conflict of judicial opinion.

6. On the third ground Mr. Krishnamoorthi Iyer's position is the converse of what the lower Court thought. It is contended that when there is sale of property in one lot and there is a circumstance vitiating a part while the sale in respect of the other is good, the part that is good would render the vitiating part also good. In any view, it is contended that the setting aside of the sale in its entirety is unjustified as the sale could be set aside piece-meal in respect of the portion which is vitiated. It is contended that the sale could and therefore should have been set aside only in part limited to the share of the deceased first Defendant which sale alone could be said to have been defective.

7. As regards the 4th ground on which the order of the Court below is based, Mr. Krishnamoorthi Iyer contends that the applications to set aside the sale are barred by limitation. Even if there is any defect attaching to the sale, it is contended, that it is not such as to render it void so as to make an application presented within three years within time but it would be only voidable so as to justify an application under Order 21, Rule 87, Travancore CPC which has to be presented within 30 days. A question was raised in the Court below that the case comes within Section 18, Limitation Act, and that the applications are not barred by limitation for that reason. In the view taken by the lower Court that the sale is void, an application to set it aside came within the three years rule. This point had not to be and was not therefore considered.

8. A Division Bench of this Court of which I was a member felt that the decision in - "Acha v. Maravanthuruthu Pakuthy" AIR 1950 TC 1 (A) required reconsideration and the case in which that question arose was referred to a Full Bench. On scrutiny of the facts by the Full Bench of which also I was a member it was discovered that the question did not arise and was, therefore, not decided by the Full Bench. In view of the importance of this question and in view of the conflicting judicial opinion that prevails in respect of ground No. 2 taken by the Court below and in view also of the importance of the other questions which are of frequent occurrence, I consider it necessary that this case be referred to a Full Bench for decision. As the whole case is referred to the Full Bench, it is not necessary to formulate the various points that arise for decision as it is for the Full Bench to do so.

Sd. P.K. Subramonia Iyer, Judge, Sd. Joseph Vithayathil, Judge,

I agree

24th July 1953

The first Question for consideration is who is or who all are the legal representative or legal representatives of the first Defendant who died intestate leaving him surviving only his two brOrs. , Defendants 2 and 3 and no other relation. The surviving brOrs. are his heirs under the Travancore Christian Succession Act which governs the parties. Ordinarily they axe his legal representatives. This is not disputed. But Type Varghese, the first Respondent, claims to be the legal representative and sole legal representative of the first Defendant's interest in the property on the basis of Ext. III, a deed of settlement made by the first Defendant in 1113(sic), i.e., three years before his death pursuant to which title and possession passed to the settle which continue with him. This claim cannot be accepted. Ex. III transfers the first Defendant's interests in the property of his nephew. Type Varghese in praesenti subject to the transferee's obligation to maintain the transferor, default wherein would entail dispossession and retention of the property for a life estate by the transferor. The entire rights in the property vested in the transferee during the lifetime of the transferor and there was nothing left in the transferor to devolve on his death upon the transferee. The transfer being pendente lite was affected by the rule of lis pendens embodied in Section 52, T.P. Act, which before 26-1-1950 read as follows:

During the tendency in any Court having authority in India or established beyond the limits of India by the Central Government of any suit by proceeding which is not collusive and in which any right (sic) to immovable property is directly and (sic) in question the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation: For the purposes of this section, the tendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceedings in a Court of competent jurisdiction,, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

After the Constitution of India came into force and after the operation of the Act was by Act 3 of 1951 extended to Part B States the section as amended up to 15-7-1951 reads thus:

During the tendency in any Court having authority within the limits of India

excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation: For the purposes of this section, the tendency (sic) of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent Jurisdiction and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

The Act has come into force in the Travancore-Cochin State on 1-5-1952. Vide Notification No. LR5-5577/51/RD dated 22-3-1952. Though the Transfer of Property Act was not in the Statute Book of Travancore the rules of Section 52 were being enforced by the Courts in that area as principles of general application and not as statutory provisions. A transfer pendant light is good as between the parties thereto, only the transferee's rights will be subject to the decree and execution thereof in the litigation pending which the transfer is made. The Plaintiff or the decree-holder would be entitled to ignore the transfer even if he has notice of it and proceed with the original party on record and the transferee would be bound by the ultimate result of the litigation even if he had no notice of it at any stage. Such a transferee would be a representative-in-interest of the party transferor (See - "Narayanan Gopala Pillai v. Sankaran Raghavan Pillai" AIR 1951 Trav-C 187(B) and - AIR 1937 260 (Privy Council) The question is Whether he will be a legal representative of the transferor. The term legal representative is defined in Section 2(11), Code of Civil Procedure, Act 5 of 1108, as follows:

Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

In order to constitute one a legal representative it is unnecessary that he should have a beneficial interest in the estate. Executors and administrators are legal representatives though they may have no beneficial interest. A person usurping the position of an executor or administrator would also be a legal representative as an executor or administrator de son tort. A trespasser into the property of the deceased claiming title in himself Independently of the deceased will not be a legal representative. Heirs on whom beneficial Interests devolve under the law, whether statute or other, governing the parties, will be legal representatives. In

order to determine the legal representative of a deceased person it is not necessary that the existence or quantum of the estate to be represented should first be ascertained. A legal representative after the death of a person represents whatever estate the deceased had in his lifetime. The term legal representative of the estate of a deceased person is strictly a misnomer as the deceased could have no estate after his death as the estate will then be that of the persons on whom it devolves. The character of legal representative must accrue after and on account of the death of the person whose estate is to be represented. There cannot be a legal representative of a person in his lifetime. The transferee of property acquires rights during the lifetime of the transferor and none alter or on account of the transferor's death. Therefore, the transferee in a transfer inter vivos cannot be a legal representative (See - *Mithan Lal Vs. Maya Devi and Others* and - *Gobardhan Mukharji Vs. Saligram Marwari and Others*,

(2) The question then is whether the circumstance that in this case transfer was pendente lite and that before proceedings in execution which terminated in the impugned, auction sale commenced the transferor had died makes any difference; or, in other words, what is the effect of there having in this case been a double devolution, namely, devolution by death of a party under Rules 2 and 3 of Order 22 of the CPC and one of the other kinds of devolution contemplated by Rule 10 of that Order. As a transferee pendant lite Type Varghese had no right to insist upon being impleaded in addition to or instead of the transferor. It was a matter in the discretion of the court, whether to implead him or not even if the transfer had been brought to the notice of the Court and application made for bringing in the transferee by either of the parties to the transfer. The decree-holder was entitled to continue the proceedings in execution with the transferor on record and the transferee would be bound by the ultimate result. The question is whether the right of the decree-holder to ignore the transfer "pendente lite" continues after the death of the transferor and would enable the decree-holder to prosecute the proceedings with the legal representatives of the deceased transferor on record and without the transferee. The infirmity of the transfer as one "pendente lite" in that its operation is subject to the result of the litigation including the last order in execution would continuously attach to it until the final result, of the litigation is ascertained. The transferee had no right to intervene in the lifetime of the transferor. His rights will not become enlarged after the death of the transferor because the Plaintiff or decree-holder, is given the right to prosecute the proceedings started against a person with his legal representatives on record after his death. (Rule 3 of Order 22). This right cannot be encroached upon and will not be affected by a transfer "pendente lite" as to permit that to be done will defeat the policy and the purpose of the rule of "lis pendens" which in the words of Turner L.J. in - "*Bellamy v. Sabine*" (1857) 1 D&J 566 (F).

rest upon this foundation that it would plainly be impossible that any action or suit could be brought to a successful termination, if alienation "pendente lite" were permitted to prevail. The Plaintiff will be liable in every case to be defeated by the Defendant's alienating before the judgment or decree and would be

driven to commence his proceeding "de novo", subject again to be defeated by the same course of proceeding.

The Reasoning applies with as much force after the death of the transferor as during his lifetime. The proceedings in execution would be good if conducted with the legal representatives of the deceased first defendant on record. The first Defendant died in the course of E.P. No. 744 of 1118 on which notice under Order 21, Rule 20, Travancore CPC corresponding to Rule 22 of the Indian Code as ordered on account of the expiry of an year after the last order in execution. Notices were served on Defendants two onwards but not on the first Defendant, as he was then no more. The order of the Court to bring in the legal representative of the deceased first Defendant was not complied with and the execution petition was therefore, rejected for that default on 30-2-1119. E.P. 301 of 1119 pursuant to which the concerned sale was held was dated 29-5-1119.

The decree-holder impleaded Defendant 2 and 3 on their own behalf as also as the legal representative of the deceased first Defendant and prayed for the issue of notices to them as such under Order 21, Rule 20. An affidavit swearing that Defendant 2 and 3 are and are the only legal representatives of the deceased first Defendant accompanied the Execution Petition. Batta for the issue of notices to these Defendants under, Order 21, Rule 20, was also deposited the same day by the decree-holder. (See Index No. 53, C.P. No. 12913).

The decree-holder had, therefore, done all that he should and could in the matter. If notice did not issue it was not on account of any fault of his. The order for producing proclamation schedules for sales on 9-5-1119 passed on 4-6-1119 upon this Execution Petition proceeds on the basis that all necessary preceding step had been properly taken, The decree-holder could not know that no notices were issued if really none had been.

Further notices in execution of settlement of the draft proclamation for sale have all issued. Notice upon the second Defendant is seen uniformly affixed. Notice of proclamation was after several efforts at ascertaining the Proper address ultimately served upon the third Defendant (See Index No, 63). Notices to Defendants 2 and 3 must be taken to have been served from the state of the draft proclamation.

The question whether non-service of notice upon the legal representatives, namely, Defendant 2 and 3, under Order 21, Rule 20, would vitiate the proceedings in execution which terminated in the sale impugned will be considered later. For purposes of determining the question under discussion it may be assumed that Defendants 2 and 3 who were the only legal representatives of the deceased first Defendant were notified under Order 21, Rule 20.

There may nevertheless be a question whether there having been no order of Court recording them as the legal representatives of the deceased(sic). The estate was represented by them. The decision of the Privy Council in -

"Maikarjun v. Narhari" 25 Bom 337 (PC) (G), was pressed in aid on behalf of the Respondents to argue the absence of representative capacity on account of the absence of an order of Court recording them as legal representatives.

The scope of that decision as explained by their Lordships in their later pronouncements in -"Khairajmal v. Diana" 32 Cal 296 (H) and - "Raghunath Das v. Sundar Das Khetri" AIR 1914 PC 129 (I), with special reference to double devolution as in the present case was thoroughly discussed by my Lord, Koshi, J., as he then was, in 40 CLR 123 (J), which elicited the appreciative concurrence of his Lordship Ananthakrishna Iyer, C.J., I entirely agree and have nothing to add.

It would therefore, be supererogatory to embark upon that aspect afresh in this judgment and it is enough to record affirmance of the views expressed therein and state the positions that emerge therefrom. Rule 5 of Order 22, CPC empowers the Court to determine who the legal representative of a deceased party is when a question arises the Court's order, though it turns out to be erroneous would operate and confer jurisdiction upon the Court to continue the proceedings with the legal representative as found by it on the record to represent the estate of the deceased.

If a person is really the legal representative and he is on the record as such he will be competent to represent the estate and the absence of an order in that behalf will not detract from that capacity. The Court cannot deal with a property without a person on record to take the place of the deceased to represent it, that is to say, without a legal representative of the deceased on record.

Applying these principles to the present case it follows that Defendants 2 and 3 who were all the legal representatives and who were brought on record in that capacity as well completely and effectively represented the estate of the deceased including the property in question in proceedings in execution which culminated in the Court sale whereat the Appellant was, the purchaser, that the sale is free from any defect and that it operated on confirmation to confer title on the Appellant to whom was issued a certificate as purchaser in due course.

3. The applications to set aside the sale C.M.P. Nos. 7240 and 7241 of 1120 presented by Iype Varghese, the settlee under Ext. III, and the second Defendant respectively, presented on 27-5-1120, i.e., more than five months after the sale, were both barred by limitation as the time within which they should have been filed is 30 days under Article 151, Travancore Limitation Act, corresponding to Article 166 of the Indian Act.

Had the sale been void, an application, though unnecessary, to set it aside would have been governed by the three years rule in Article 165, Travancore Limitation Act, corresponding to Article 181 of the Indian Act. The Court below thought, that the sale was void and, therefore, found the petitions within time. In this it was wrong. The sale was valid though liable to be set aside on establishment of grounds therefore brought before the Court by an application presented within 30 days of the sale.

4. The question of the consequence of want of actual notice to Defendants 2 and 3 of their being proceeded against as legal representatives of the deceased first Defendant may now be considered. The Privy Council in AIR 1914 PC 129 (I), held that it is a jurisdictional factor. The effect of the introduction of Clause (2) of the rule which enables the Court to dispense with such notice in appropriate cases has occasioned a conflict of judicial decisions.

One view is that if the notice could be dispensed with it could not be a factor which confers jurisdiction on the Court. The other is that Clause (2) only confers a special jurisdiction on the Court to dispense with notice which confirms rather than negatives the position that in the absence of the exercise of that special jurisdiction to dispense with notice, the issue of notice is not a factor affecting jurisdiction.

This conflict does not fall to be resolved in this case as, in our view, the case is not one concerning inherent jurisdiction which consent cannot confer but is one where jurisdiction could be conferred upon the Court by assent or acquiescence. The object of the rule is to give the judgment debtor or the legal representative an opportunity to show cause why execution should not proceed and if he is aware of the proceeding the Court has jurisdiction to hold the sale. (See - "Chandra" Nath v. Nabadwip Chandra" AIR 1831 Cal 476 (K); Anil Kumar Roy Chaudhury and Others Vs. Ahammed Ali Sarkar and Others, ; "Sara Upadhaya v. S.R.M.M.A. Firm" AIR 1933 Rang 61(2)(M); "Ladhi Parshad v. Chaman Lal" AIR 1939 Lah 473(N).

The necessary parties, namely Defendants 2 and 3, were before Court. In the execution petition pursuant to which the sale was held they were brought in as legal representatives. Notices were issued to them on that petition regarding draft proclamation. The second Defendant was interested in the property sold in a moiety, the other moiety belonging to his deceased brother. What was proclaimed was the entire property including the interests of both brOrs. .

The non-intervention of the 2nd Defendant could not therefore be attributed to want of information of his being proceeded against as a legal representative of the deceased. Defendants 2 and 3 should have been aware of their brother's death and of their being the only legal representatives of the deceased brother.

Indeed it is not contended that they were not. The third Defendant was not interested in the property sold and notice to him in connection with the draft proclamation must reasonably have led to the inference that he is being notified in some capacity which he did not possess before his brother's death when no notice to him would have been necessary to sell the property in question.

Under these circumstances it will not (sic) violence if we conclude that Defendants 2 and 3 were aware of their being proceeded against as the legal representatives of their deceased brother and assented to or at any rate acquiesced in that being done. The non-intervention of the latter in that character may be on account of the absence of any material interest, the

property having been made over to Iype Varghese by the deceased during his lifetime.

The amount of the decree was charged on the property and an aliquot part sufficient to satisfy the claim was sold and satisfaction of the decree was recorded on confirmation of sale. There was no purpose to be served by the appearance of the judgment-debtors and that would also account for their inaction.

The want of beneficial interest in Defendants 2 and 3 in the property settled as per Ex. III does not, as already stated, militate against their capacity as legal representatives representing the estate of the deceased which should for this purpose be deemed to comprise the property in dispute as well. The principle that a mistake of Court should not prejudice a party also comes up for application here,

The decree-holder had done all that he should have done in the matter of issue of notices under Order 21, Rule 20, to Defendants 2 and 3 and if the Court by mistake omits to record an order dispensing with notice and conducts itself as though everything was in order on the faith of which all parties acted, the purchaser who is a stranger in this case should not be disappointed in the matter of his purchase.

5. The other question that is raised relates to the theory of substantial representation. As observed by Sulaiman, C.J. and Mukherjee, j. in - *Amarchand and Another Vs. Parmanand and Others* followed in 40 CLR 128 (P), this theory should be confined to cases where the Court decides a question as to who is the legal representative of a deceased party and that decision happens to be erroneous.

The person determined by Court to be the legal representative will acquire competence by the order to represent the estate even though he may happen to be really not the legal representative. In a case where there are several legal representatives of a deceased person and according to the personal law applicable to them one of them can represent the Ors. as in the case of a Malabar tarwad of thavazhi or a family under the Hindu Law the representation by the karnavan or (sic) is complete.

Where, on the other hand, the heirs are co-owners as in the case of Muslims or Christians, for instance, one of the heirs cannot represent the Ors. except when he could do so on account of any custom before proof thereof was prohibited among the Muslims by the Muslim Personal Law (Shariat) Application Act, 26 of 1937, in which event the case would bear the analogy of the Malabar tarwad or Hindu family.

Otherwise the interest of each heir as co-owner being distinct and separate if any one or more was not on record the interests of the absentee or absentees would be unrepresented and beyond the competence of the Court to deal with. This

would be the result, however "bona fide the opposite party, the Plaintiff or decree-holder as the case may be, may have been.

The "bona fides" of a claimant prosecuting a proceeding cannot and will not clothe one of the co-owners with competency to represent the Ors. who are not on record. There is no principle on which it can be posited that "bona fides" of the Plaintiff or decree-holder would injuriously affect the interests of the parties omitted to be impleaded.

On the other hand, if the person prosecuting the proceeding is guilty of fraud or collusion in the matter of bringing certain persons on record as legal representatives the proceeding would be vitiated even though upon his fraudulent representation has been superimposed the order of the Court that the persons put forward are the legal representatives of the deceased, for fraud vitiates the most solemn proceedings even of Courts of Law, and the person guilty of a fraud will not be permitted to take advantage of the Court's order, as to allow him to do so would be to enable him to be benefited by his own fraud which the law abhors.

Cases which depend on the "bona fides" of Parties for upholding the propriety of proceedings in a Court would on analysis be found to rest upon circumstances short of absolute disability of one to represent Anr. , it is not necessary to discuss the cases and it is sufficient to record a respectful dissent from the view that In the absence of circumstance enabling in that regard, one heir as a co-owner can represent Anr. heir or other heirs with similar rights on account of the "bona fides of the opposite party so as to deprive the absentees of their rights as it is not merely not sanctioned by law but is opposed to principles and authority.

Reference may with advantage be made to-- AIR 1949 195 (Federal Court) in this connection as it throws light on and indicates the proper mode of approach to the matter and serves to confirm the conclusion reached in 40 CLR 128 -(P), and in this judgment. AIR 1950 TC 1 (A), which held that two out of more heirs of a deceased Christian who are all co-owners could represent the Ors. and the estate belonging to all of them completely on account merely of the decree-holder's "bona fide" belief that the two on record are the only heirs induced as a result of investigation which was as thorough as Possible under the circumstances is for the foregoing reasons wrongly decided and is overruled.

6. The question that remains is whether a sale of property belonging to more persons than one having distinct and separate interests would in the event of its happening to be bad in part, could be wholly void, the bad part vitiating the rest or it would be good all round, the good Part rendering the remaining also good, This is a question that does not admit of an answer in the simple affirmative or negative as it depends upon the circumstances.

A Court auction sale may be set aside in part if it is held in lots with separate particulars and proceeds. When a Court sale is composite; i.e., of an entire property, comprising undivided though distinct interests belonging to various

persons and what is proclaimed for sale is the entire property as though it belonged to a single owner without discriminating the separate interests with their particulars a piecemeal setting aside is not possible and the party entitled to relief though his interest may be fractional cannot, be denied his rights on account of the accident of the existence of a simultaneous sale of Anr. fractional, part or parts regarding which the sale may be good.

In such a case in truth the sale is not a separate sale, of the fraction at all but it is a sale of an entire property which is not capable of being split up into parcels. There will also be difficulty, if not impossibility, of apportioning the proceeds of sale among the parts of which the property sold is composed.

No further discussion of this question is called for in this case as neither, the purchaser Appellant nor the claimants Respondents agree to regard the sale limited to the share of the 2nd Defendant in the event of the sale of the share of the first, Defendant being found void as both the Respondents sail in the same boat and put forward common grounds attacking the entire sale. Though they filed separate petitions, the grounds relied upon were identical and there was only one set of evidence, and one order as though the petitions were consolidated. The (sic) single appeal was not questioned,

7. In the result, the order of the Court below setting aside the sale cannot be supported and setting it aside we allow the appeal with costs here and in the Court below.