

(1900) 11 MAD CK 0004
In the Madras High Court

Chakrapani Chettiar

APPELLANT

Vs

Dhanji Settu and Others

RESPONDENT

Date of Decision : 23-11-1900

Acts Referred:

Citation : (1901) ILR (Mad) 311

Hon'ble Judges : Arnold White, C.J;Subrahmania Ayyar, J

Bench : Division Bench

Judgement

1. It is not disputed that it was competent for the petitioner in the Court of First Instance who, as decree-holder in Suit No. 378 of 1897, was

entitled to rateable distribution of the assets realized in the sale in execution of the decree in Suit No. 477 of 1898, to apply u/s 311 of the CPC to

have the sale in execution of the decree in Suit No. 477 set aside on the ground of irregularity. See Lakshmi v. Kuttunni ILR 10 Mad. 57. The sale

was twice adjourned with the consent of the judgment-debtor, and finally took place, also with the consent of the judgment-debtor, without a fresh

proclamation. The argument of the petitioner before this Court is that by reason of the judgment-debtor having consented to the adjournments, and

to the sale taking place without a fresh proclamation, the Court of First Instance, in setting aside the sale exercised a jurisdiction not vested in it by

law or acted in the exercise of its jurisdiction illegally or with material irregularity. It has been held by this Court that when a Court professing to act

u/s 311 of the CPC set aside a sale without proof of substantial injury the order was passed without jurisdiction within the meaning of Section 622,

Code of Civil Procedure. See Lakshmana v. Najimudin ILR 9 Mad. 145.

2. It is no doubt the interest of the judgment-debtor to require a proclamation to

issue, but it does not follow because Section 291 allows a sale to take place after an adjournment without a proclamation, if the judgment-debtor waives his right to a proclamation, that it is not competent under any circumstances for a judgment creditor to object to the sale taking place without a fresh proclamation or to impeach the regularity of the sale on the ground that there has been no fresh proclamation, It. might well be that a judgment-creditor desires a fresh proclamation to issue notwithstanding the waiver by the judgment-debtor. If, on an application by the judgment-creditor that a fresh proclamation should issue, the Court declined to allow it to issue, we should be disposed to hold that this was a ground on which the regularity of the sale could be impeached by the judgment-creditor. But it is not necessary for us to decide this point.

3. There was no doubt a mis-description of the property but as the District Munsif finds expressly that there was no loss by reason of this mis-description it cannot be relied upon as a ground for setting aside the sale.

4. The District Munsif finds that the property was bought by the decree-holder's clerk, and he finds that the evidence of the decree-holder to the effect that he did not ask his clerk to bid for him and of the clerk to the effect that he purchased for his own use is untrue. The decree-holder did not obtain leave to bid. The District Munsif does not in terms refer to Section 294 of the Code of Civil Procedure, but he finds in effect that there had been a violation of its provisions.

5. The District Munsif also holds that there was substantial loss by reason of the property having been bought by the decree-holder's clerk, and the District Judge states that he is not satisfied that there is any reason for dissenting from the conclusion arrived at by the District Munsif. There can be no doubt, therefore, that the sale was invalid. The fact that Section 294 of the CPC was not referred to in the petition or in the judgments of the Courts below does not preclude us from holding the sale to be invalid as the point was expressly raised and determined in the Court of First Instance.

6. In our opinion it cannot be said that the Court of First Instance acted without jurisdiction in setting aside the sale and this petition must be dismissed with costs.