
(1898) 08 MAD CK 0008
In the Madras High Court

Changa Ram

APPELLANT

Vs

Narayani Ammal and Others

RESPONDENT

Date of Decision : 18-08-1898

Acts Referred:

Citation : (1898) 8 MLJ 194

Judgement

1. The point which I took time to consider was, whether an auction-purchaser having ineffectually made an application u/s 315 of the Civil

Procedure Code, may afterwards bring a suit to recover the purchase-money. It appears that the application for repayment of the purchase-money

made after the sale of the property was set aside was dismissed on the ground of limitation. It is said that it was wrongly dismissed, but the point is

not material, because it is not suggested that the present suit is barred by the law of limitation.

2. I was inclined to think that the plaintiff having elected to proceed by application could not subsequently have recourse to a regular suit, and

Stuart, C.J., in the case cited (Munna Singh v. Gajadhar Singh, I.L.R., 5 A. 582) seemed to have entertained that opinion. It certainly is not

convenient that a purchaser should be at liberty to vex the judgment-creditor by adopting, first, one of the remedies, and then, the other. In a case,

however, like the present in which the claim has not become res judicata in. the first proceeding, I do not see on what principle the purchaser can

be prevented from instituting another proceeding. Here the application led to nothing; there was no decision of any question arising in the suit. It

may have been open to question whether, since the"" right to recover the purchase-money is a creature of the Code, any remedy other than that

indicated in the Code was intended to be available to the purchaser.

3. It has been decided that a suit is maintainable, and this being so, I do not think the right to sue can be affected by the circumstance that a prior

application has been made, unless in that application the matter has been made res judicata.

4. I think the decree of the Subordinate Judge must be reversed, and he must be directed to decide what sum is recoverable and from which of the

defendants and to pass a decree accordingly.

5. I give the petitioner costs of this application. Other costs, the Subordinate Judge will deal with.