

**(1920) 10 MAD CK 0009**  
**In the Madras High Court**

Kalinadhabhotla Brahmayya

APPELLANT

Vs

Marla Appaya Sastri and Others

RESPONDENT

---

**Date of Decision :** 06-10-1920

**Acts Referred:**

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

**Citation :** AIR 1921 Mad 121 : (1921) 13 LW 16 : (1921) 40 MLJ 55

**Hon'ble Judges :** Odgers, J;Abdur Rahim, J

**Bench :** Full Bench

---

**Judgement**

Abdur Rahim, J.—This suit was instituted in order to have an auction sale held in execution of a decree, of the plaintiff's property set aside

on the ground of irregularity and fraud. The sale was held on the 20th March, 1917. The present plaintiff, the judgment-debtor, applied on the 25th

April, 1917 under Order XXI, Rule 90 of the CPC to set aside the sale on the very same grounds as are now raised in the plaint. The application

was dismissed as it was made after the expiry of the thirty days allowed by law and we may point out that the sale had been confirmed under

Order XXI, Rule 92(1) on the day previous to the application. Then the plaintiff filed an appeal and the appellate court remanded the application

for fresh disposal on the ground that the court had inherent jurisdiction to set aside the sale even after the expiry of the period of limitation and after

the confirmation of the sale.

2. The present suit was filed on the 27th August, 1917. i.e., during the pendency of the appeal against the order dismissing the present plaintiff's

application under Rule 90.

3. The question arises whether the present suit is maintainable. Order XXI, Rule

92(3) states that "" no suit to set aside an order under this rule shall be brought by ""any person against whom such order is made."" Rule 90 provides for the question being decided by the court upon an application made to it for setting aside the sale if the sale is vitiated by material irregularity or by fraud in publishing or conducting it. In this case these are the very grounds for impeaching the sale and the legislature has specially laid down that a sale cannot be impeached when once it has been confirmed on such grounds except in accordance with the procedure provided by Order XXI, Rule 90, and that no suit shall lie after the sale has been confirmed.

4. The lower appellate court held that the suit was maintainable solely relying on some general observations of Mr. Justice Sadasiva Aiyar in

Payidanna v. Lakshminarasanna I.L.R.(1914) Mad. 1076 . These observations, whatever might have been their application to the facts of the case

before the learned Judge, have no application to the present case, inasmuch as the plaintiff had a clear remedy under Rule 90 and failed to avail

himself of it during the time allowed by law, so that the sale became absolute under Rule 92. The policy of the legislature is quite obvious that all

questions of this character should be decided by the executing court and not by a separate suit.

5. The Judgment of the Subordinate Judge should be set aside and that of the District Munsif restored with costs here and in the court below.

Odgers, J.

6. I agree.

7. It is quite clear to my mind that the lower appellate court is wrong in holding that a suit lies in the present case. The matter is clearly concluded

by the words of Order XXI, Rule 92(3). The lower appellate court however has considered itself bound by certain observations of Sadasiva

Aiyar, J. in Payidanna v. Lakshmi Narasanna ILR (1914) Mad. 1076. Not only do I think those observations have no application to the present

case, as erroneously stated by the lower appellate court, but with respect to the learned Judge, I find myself quite unable to agree with him when

he says that in a case under Order XXI, Rule 90, ""the court without setting a side the sale can give an injunction to the court auction-purchaser to

reconvey the property to the judgment-debtor."" If the learned judge

meant1.that relief can be afforded in execution to the judgment-debtor outside the provisions of the Code of Civil Procedure. I am able with respect to follow him. The learned Judge also observed that "" the hands of Courts of Justice are not tied in these matters simply because, to support the grant of a particular appropriate relief, no exact precedant could be quoted."" By that I assume the learned Judge to mean that reliefs can be granted in certain cases although such reliefs may not be afforded by any provision of law, or by the practice of the courts"". If that be the meaning of the learned Judge, I respectfully but emphatically dissent from it.

8. I agree with my learned brother as to the order to he made in this case.