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**(1939) 12 MAD CK 0003**

**In the Madras High Court**

Katta Virayya and Others APPELLANT

Vs

The Official Receiver and Others RESPONDENT

**Date of Decision :** 04-12-1939

**Acts Referred:**

**Citation :** AIR 1940 Mad 611 : (1940) 1 MLJ 574

**Hon'ble Judges :** Horwill, J

**Bench :** Division Bench

## Judgement

Horwill, J.—This suit has been brought by three creditors to set aside a sale of the insolvents'' property on the grounds of fraud and

collusion, material irregularity, want of proclamation, and the knocking down of the property for a grossly inadequate sum. Both the Courts below

have found that there was no fraud or collusion or material irregularity and have therefore dismissed the suit.

2. It is argued here that even though the findings of the Courts below as to the absence of fraud and material irregularity are true; yet the

insufficiency of consideration is in itself a sufficient ground to warrant the Court in setting aside the sale; for the Insolvency Court is not limited to

the same considerations as a Civil Court under Order 21, Rule 90, Civil Procedure Code. M.T.T.K.M.M.N. Venkatachelan Chettiar v.

M.T.T.K.M.M.S.M.A.R. Murugesan I.L.R.(1931) 9 Rang. 231 has been quoted as an authority for this position. It was there held that the

Insolvency Court has always full control over the acts of the Official Receiver and can therefore set aside a sale where it is of opinion that it has

been unfair or has caused any wrongful loss to the creditor; and that therefore the Court is not circumscribed by the narrow provisions of Order

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21, Rule 90, Civil Procedure Code. That case, however does not bear very much resemblance to the present one, as there was an undoubted

hardship there to a particular creditor who had been attending the auctions and who, on account of the incorrect information given by the bailiff,

was not actually present when the property was knocked down to the highest bidder. He at once went to the Court and was obviously distressed

by his misfortune. It was held that u/s 68 of the Provincial Insolvency Act the Insolvency Court had every right to set aside the sale on such a

ground, even though there was no fraud or material irregularity. In the present case all that can be said for the appellants is that the sum realised

was inadequate. Even on that point, the lower appellate Court is not satisfied; but the fact that the appellants have deposited in Court Rs. 2,000

since the filing of this appeal is some indication that they considered the property to be worth very much more than the Rs. 250 for which it was

knocked down.

3. In the present case there is another obstacle in the way of the appellants. They did not put in an application u/s 68 of the Provincial Insolvency

Act as the creditor did in M.T.T. K.M.M.N. Venkatachelan Chettiar v. M.T.T.K.M.M.S.M.A.R. Murugesan I.L.R.(1931) 9 Rang. 231 and the

Court that tried the present suit was not the Insolvency Court at all. An ordinary Civil Court has no power or control over the acts of the Official

Receiver. Presumably, a sale can be set aside in a Civil Court only on grounds similar to those on which a contract could be set aside. A mere

irregularity or inadequacy of price would be no ground for setting aside a sale in, a suit.

4. In either event, therefore, the appeal fails and is dismissed with costs of the third respondent. The amount deposited in Court by the appellants

will be refunded.

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