

(1918) 08 MAD CK 0023
In the Madras High Court

Komandur Krishnamacharlu

APPELLANT

Vs

B. Danoji and Others

RESPONDENT

Date of Decision : 12-08-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 92

Citation : (1918) 8 LW 592 : (1918) 35 MLJ 604

Hon'ble Judges : Abdur Rahim, J

Bench : Division Bench

Judgement

Abdur Rahim, J.—This petition raises a somewhat difficult question of law on the interpretation of Rules 92 and 93 of Order XXI, Civil

Procedure Code. The petitioner before the High Court bought certain properties at an auction sale and afterwards applied to have the sale set

aside under Rule 91 of Order 21, CPC on the ground that the judgment-debtor had no saleable interest in the properties sold. He succeeded in his

application but he did not make parties to the proceeding the respondents before me who had obtained orders for rateable distribution of the sale

proceeds of the property of the judgment-debtor before the application was made by the petitioner to set aside the sale under Rule 91 of Order

XXI, Civil Procedure Code. The District Munsif held that under Rule 92 of Order XXI persons having an order in their favour for rateable

distribution were entitled to notice as "persons affected" by the application to set aside the sale and that therefore the respondents were not bound

by the order made in their absence on the application of the petitioner.

2. It is argued before me by the learned Vakil for the petitioner that once there is an order made under Rule 92, it binds all persons affected

thereby, although they were not made parties to the proceedings, and all that the Court has to do under Rule 93 when it finds that such an order has been made, is to direct any person to whom the purchase money has been paid to refund it. The question is not covered by any authority, and as I have already stated, is not free from difficulty. If it were necessary to express my view on this point, I should be inclined to hold that persons who had obtained orders for rateable distribution are persons affected by an application to set aside the sale within the meaning of Rule 92, and an order made behind their backs cannot bind them for the purposes of Rule 93. But, Mr. T.M. Krishnaswamy Aiyar has, I think, rightly pointed out that in any case this is not a matter in which any question of jurisdiction arises as to call for interference of this Court u/s 107 of the Government of India Act, The District Munsif was entitled in deciding upon the rights of the parties to deal with the question of law raised before him, and this is not a case in which it could be said, even if he erred in his interpretation of Rs. 92 and 93, that he declined or failed to exercise jurisdiction vested in him by the law. The petition is therefore dismissed with costs.