

(1912) 04 MAD CK 0037
In the Madras High Court

Krishnama Naiken

APPELLANT

Vs

Kandasami Gounden and Others

RESPONDENT

Date of Decision : 18-04-1912

Acts Referred:

Citation : (1912) 23 MLJ 108

Judgement

1. The lower appellate court has not found the facts necessary to entitle the decree-holder to re-open the execution proceedings. Section 315 of

the CPC requires that it should be found that the judgment debtor had no saleable interest in the property sold at the time of the sale. There is no

such finding recorded by the lower appellate court. The judgment debtor did not admit that he had no saleable interest in Survey Nos. 443 and

460. He asserted the contrary in his memorandum of appeal to the lower appellate court. We must therefore ask the lower appellate court to

submit a finding on the question whether the judgment-debtor had a saleable interest in Survey Nos. 443 and 460 on the date of the auction sale.

Fresh evidence relating to this question may be admitted. The finding should be submitted within two months after the reopening of the Court after

the recess. Seven days will be allowed for filing objection.

2. In compliance with the order contained in the above judgement the District Judge of Coimbatore submitted the following finding.

My finding on the issue remanded is with regard to Survey No. 460 in the affirmative with regard to Survey No. 443 in the negative.