
(1916) 01 MAD CK 0045
In the Madras High Court

Lingam Krishna Bhupatt Devu Garu

APPELLANT

Vs

Jogani Venkataswamy

RESPONDENT

Date of Decision : 04-01-1916

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 93, 115

Citation : 33 Ind. Cas. 235 : (1916) 3 LW 105

Hon'ble Judges : Sadasiva Aiyar, J; Moore, J

Bench : Division Bench

Judgement

1. We do not think that an order under Order XXI, Rule 93, of the CPC in favour of a third party purchaser is a question between the parties to the suit relating to the execution, discharge, or satisfaction of the decree, as that order by itself has no legal effect on the rights and liabilities as between the decree-holder and the judgment-debtor.
2. The preliminary objection that no appeal lies must, therefore, be upheld.
3. We are asked to treat the appeal as a revision petition u/s 115 of the Code of Civil Procedure, and we use our discretion under the circumstances in the appellant's favour in accordance with his request.
4. It is clear that the appellant (judgment-debtor) did not get any notice to show cause why he (the judgment-debtor) should not be held liable to pay the poundage fees to the purchaser at the cancelled sale. The order passed against him was, therefore, passed through the Court's acting illegally and with material irregularity in the exercise of its jurisdiction and ought to be set aside, especially as the purchaser did not pray for the refund of the poundage from the judgment-debtor. It is, again, very doubtful whether the judgment-debtor (who was not the party at whose instance the sale was held, though he was the person at whose instance the sale was set aside) could be considered to be a person to whom the poundage money (which is deposited in Court) "has been paid" (Order XXI, Rule 93, of the Code of Civil Procedure). It is, however, unnecessary to express a

final opinion on that point for the decision of this case.

5. The order of the lower Court is set aside and the petition to the lower Court will stand dismissed. There will be no order as to costs in either Court.