

(1936) 11 MAD CK 0033
In the Madras High Court

Marudamuthu Kadurar

APPELLANT

Vs

Arumugasami Kadurar and Another

RESPONDENT

Date of Decision : 12-11-1936

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 89

Citation : AIR 1937 Mad 270 : (1937) ILR (Mad) 828 : (1937) 45 LW 88 :
(1937) 1 MLJ 264

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This Civil Revision Petition arises out of an application made under Order 21, Rule 89, Civil Procedure Code, to set

aside a court sale. The application was made by three petitioners, of whom the petitioner was the third petitioner before the Subordinate Judge.

The other two petitioners were the purchasers of two lots of the property sold, namely, lots 1 and 3.

2. The facts are briefly these. In execution of the decree in O.S. No. 109 of 1927 in which the petitioner was the only defendant, four items of

property were ordered to be sold. The first petitioner in the lower Court purchased the first lot for Rs. 1,000 which was deposited by him. Lot 2

was not sold. The second petitioner purchased the third lot for Rs. 800. He also deposited the money into Court. Lot 4 was purchased for Rs.

1,005 by the decree-holders who were minors represented by their next friend. Pending confirmation of the sale the 3rd petitioner (that is, the

judgment-debtor-petitioner) privately sold lot 1 to the first petitioner for a sum of Rs. 1,200. He wanted that a sum of Rs. 957-13-0 out of this

amount may be appropriated towards the decree amount, the balance being the

poundage of Rs. 42-3-0. Lot 3 properties were sold by the judgment-debtor privately to the second petitioner for Rs. 1,000. He prayed that out of that sum Rs, 764-1-0 may be appropriated towards the satisfaction of the decree, the balance of Rs. 35-15-0 representing poundage. The third petitioner, the appellant, has deposited in Court Rs. 369-8-0. Thus the total amount available is Rs. 957-13-0 plus 764-1-0 plus 369-8-6, in all Rs. 2,091-6-6. This amount will cover the amount mentioned in the sale proclamation, that is, Rs. 1,998-14-6 plus 5 per cent, on the sale price of lot 4 purchased by the decree-holders plus the poundage in respect of the sale of lot 4. In these circumstances the three petitioners ask the Court to set aside the sale stating that they have complied with the provisions of Order 21, Rule 89, Civil Procedure Code, the relevant portions of which are as follows:

(1) Where immovable property has been sold in execution of a decree, any person, either owning such property or holding any interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court, (a) for payment to the purchaser, a sum equal to five per cent, of the purchase money, and (b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale, have been received by the decree-holder.

3. It will be observed that of the three petitioners, petitioners 1 and 2 are themselves purchasers of two items of the property and are hence incompetent to maintain an application under Order 21, Rule 89. But the judgment-debtor being one of the petitioners entitled to apply under Order 21, Rule 89, the question whether the sale can be set aside in the above circumstances has to be considered; and, as already stated, he is the only petitioner before this Court.

4. The learned Subordinate Judge set aside the Court sale, but his order was set aside by the learned District Judge.

5. The question of law presented by this case is a novel one and has not been the subject-matter of decision in any court. It is argued by the petitioner that, inasmuch as the two purchasers have expressed their willingness that the money deposited by them in Court, may be used by him as

the properties have been privately sold to them, he has complied with the provisions of Order 21, Rule 89, Civil Procedure Code, by depositing in

Court the necessary funds and the sale should therefore be set aside. Fie is supported in his application by the two other purchasers. It appears to

me that the contention of the petitioner cannot be accepted. If the money deposited by the purchasers of lots 1 and 3 can be used by the appellant,

then no doubt the sale should be set aside. The question is, can it be said in the circumstances of the present case that the appellant has deposited

in Court the necessary sum? It is argued that since the purchasers of lots 1 and 3 have expressed their willingness that the money deposited by

them may be used by the petitioner, that money has become his for depositing in Court and that he has therefore deposited into Court the

necessary amount. In support of this contention an unreported decision of this Court in C.M.A. No. 82 of 1911 has been brought to my notice,

but that case is distinguishable from the present one inasmuch as the amount in Court standing to the credit of the coparceners which they allowed

the 5th defendant, the petitioner, to use for setting aside the sale was their own money, that is money lying to their credit, and therefore it may well

be said that it became the money of the petitioner for him to deposit in Court within the meaning of Order 21, Rule 89, Civil Procedure Code,

when they expressed their consent to that course. If in the present case the amount deposited by the petitioners 1 and 2 can, after the deposit, be

said to be money which they can deal with as they liked, then the argument that taking that amount also into consideration the petitioner has

deposited in Court sufficient amount to make the payments, may be accepted. It seems to me that after making the deposit the money deposited

by the purchasers is in the custody of the Court till final orders are passed by it with respect to the sale. If the sale is confirmed the purchasers get

the property and the money can no longer be claimed by them. If on the other hand it is set aside they will be refunded the money and it becomes

theirs. But they cannot while the money is kept in the custody of the Court operate upon it to enable the person wanting to set aside the sale to use

it for the purpose of depositing in Court within the meaning of Order 21, Rule 89. In the circumstances of the present case I am not satisfied that

the petitioner has deposited in Court the amount necessary for making the payments under Clauses (a) and (b) of Order 21, Rule 89, Civil

Procedure Code. In my opinion the order of the lower Court is right and the Civil Revision Petition is dismissed with costs.