
(1897) 09 MAD CK 0018
In the Madras High Court

Mithala Cheruvittil Mammod

APPELLANT

Vs

Locke and Another

RESPONDENT

Date of Decision : 02-09-1897

Acts Referred:

Citation : (1897) ILR (Mad) 487 : (1898) 8 MLJ 7

Judgement

1. Certain immovable property was sold by the Subordinate Court of Cochin in execution of a decree obtained by the Cochin Municipal

Commissioners against the appellant upon a mortgage instrument executed by him. The sale was confirmed. But before the certificate of sale was

issued, disputes arose as to whether certain buildings should be included in the certificate as part of the property sold. After hearing the auction-

purchaser, the judgment-creditor and the judgment-debtor, the Subordinate Court passed an order directing that the buildings should be included

in the certificate. The appellant preferred an appeal against the order to the District Court. The appeal, however, was rejected on the ground that

no such appeal lay. On behalf of the appellant, it was contended that the view taken by the District Court was wrong inasmuch as the question in

dispute was one which fell u/s 244 of the Code of Civil Procedure.

2. This contention is, in our opinion, untenable. Now, if the dispute involved the question of the validity of the sale, the case would, no doubt, be

governed by the ruling of the Judicial Committee in Prosanno Coomar Sanyal v. Kasi Das Sanyal, 19 I. A., 166. But the sale was not, and could

not have been, impeached by any of the parties at the time when the order in question was passed. The dispute was, and is, as to whether under

the sale the right to the land mentioned in the sale certificate alone passed to

the auction-purchaser as the appellant contends or whether, as the purchaser contends, the right to the buildings also passed. If the former contention be upheld, the party that would be affected thereby would be the purchaser. If, on the other hand, the latter contention prevailed, it is the appellant that would suffer by such decision. In neither case, the sale itself being valid, would the judgment-creditor's rights be in any way touched. There is, therefore, in this case no question in dispute between the judgment-debtor on the one side and the judgment-creditor on the other as urged for the appellant. The question in dispute is really one between the judgment-debtor and the purchaser only. Section 244 of the Code does not, therefore, apply and the conclusion of the District Court is right.

3. The appeal is dismissed with costs.