
(1938) 03 MAD CK 0032
In the Madras High Court

Monni Aidruz

APPELLANT

Vs

Sappani Mira Mohideen and Others

RESPONDENT

Date of Decision : 31-03-1938

Acts Referred:

Citation : AIR 1939 Mad 57 : (1938) 48 LW 659 : (1938) 2 MLJ 833

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—The question involved in this appeal is whether the order of the District Munsif of Tinnevely directing a re-sale of

the property under Order 21, Rule 86, Civil Procedure Code, in execution of a decree obtained by the appellant against the first defendant is valid.

The relevant facts are not in dispute. In execution of the said decree the property was sold on the 15th of September, 1933 and purchased by the

3rd respondent in this case. He deposited 25 per cent, of the purchase-money on the same date but committed default in payment of the balance

of the purchase-money within 15 days as required by Order 21, Rule 85, Civil Procedure Code. He deposited the amount one day later. After the

amount was so deposited the decree-holder applied for confirmation of the sale and for payment to him of the amount deposited in satisfaction of

his decree. Notices were issued to the judgment-debtor and also to the Official Receiver who was appointed Receiver of the property of the

judgment-debtor because of his having been adjudicated insolvent on the 6th of October, 1933. Both the judgment-debtor and the Official

Receiver objected to the confirmation and the learned Judge thereupon directed re-sale under Order 21, Rule 86. It is contended that it "is open to

the Court to confirm the sale even though deposit has not been made within 15 days as required by the section and therefore re-sale should not

have been directed. It seems to me that under Order 21, Rule 86, if there is default in payment of the balance of the purchase-money as required

by Order 21, Rule 85, it is obligatory on the Court to re-sell the property. The language of the section is ""the property shall be sold"". The

discretion vested in the Court is only as regards the forfeiture of deposit. The language used in connection therewith is:

The deposit may, if the Court thinks fit, be forfeited.

2. This is the view taken by a Bench of the Allahabad High Court in Nawal Kishore v. Buttu Mal I.L.R.(1934) All. 658 with which I agree. The

order directing re-sale is therefore perfectly valid and in accordance with the plain language of Order 21, Rule 86, Civil Procedure Code. Mr.

Thiagaraja Aiyar relied upon decisions of this Court and of other High Courts where it was held that even though the deposit as required by Order

21, Rule 85 was not made within the time limited, with the consent of all parties the Court might confirm the sale, and if the Court confirmed the

sale it was only an irregularity. But those decisions do not throw light on the question in dispute, namely, if the Court declines to confirm the sale

but passes an order directing a resale, whether the Court was not justified in doing so. In the result this appeal is dismissed with costs.

3. Leave refused.