

(1925) 10 MAD CK 0042
In the Madras High Court

(Muhammad) Mohideen Maracayar

APPELLANT

Vs

Ramanadhan Chettiar and Another

RESPONDENT

Date of Decision : 06-10-1925

Acts Referred:

Citation : AIR 1926 Mad 217

Judgement

1. This is an appeal against the order of the Subordinate Judge of Mayavaram dismissing the appellant's petition for setting aside a sale under Order 21, Rule 90. The Subordinate Judge dismissed the application on the ground that the judgment-debtor had no interest in the properties, he having sold them to Velu Pillai before the date of auction sale. The properties were sold as those belonging to the appellant. If the properties did not belong to him, the decree-holder could not have brought them to sale in execution of his decree and the Court could not have sold the properties as those belonging to the appellant. It cannot therefore be said that, when he applies under Rule 90 of Order 21 to have the sale set aside on the ground of irregularity in publishing and conducting the sale, his interests are not affected. Rule 90 is wide in its terms. It says:

The decree-holder or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it.

2. Here the property was sold as the property of the appellant and we fail to see how they ceased to be his properties before the date of sale. If he had any interest at the time when the properties were sold, it cannot be said that his interest in them had ceased by virtue of the sale which would prevent his applying under Rule 90. We think the order is bad in law and we set it aside and direct the Subordinate Judge to restore the application to file and dispose of it on the merits. Costs of the appeal will be provided for by the lower Court when it disposes of the application.