

(1927) 01 MAD CK 0015
In the Madras High Court

Narayanan, minor by next friend Palani Goundan	APPELLANT
Vs	
Pappayi alias Karuppayi	RESPONDENT

Date of Decision : 07-01-1927

Acts Referred:

Citation : AIR 1927 Mad 788 : 103 Ind. Cas. 499 : (1927) 26 LW 164 : (1927) 53 MLJ 229

Hon'ble Judges : Srinivasa Aiyangar, J

Bench : Division Bench

Judgement

Srinivasa Aiyangar, J.—The legal representative of the original 4th defendant judgment-debtor in this case is the petitioner before me. He

applied to the Lower Court under the provisions of Order 21, Rule 90 for setting aside the sale made by the Court of Items Nos. 2 and 3 under

the decree. After the decree was passed, by a special decretal order, which is now admitted, the Court directed that Items Nos. 2 and 3 under the

decree should be sold first and that it is only thereafter, if the sale proceeds thereof should be found insufficient to satisfy the decree, Item No. 1, of

which the 4th defendant had become the purchaser after the suit mortgage, should be sold. The Lower Court without going into the merits of the

application or the grounds on which the sale was sought to be set aside has dismissed the application on the mere preliminary ground that the

petitioner was not a person entitled to apply for setting aside the sale within the meaning of Rule 90. The expression used in that rule is that the

application should be by a person who is entitled to share in the rateable distribution of assets or whose interests are affected by the sale. There is

no question of the petitioner being interested in the rateable distribution in this case. The question then is whether he is or he is not a person whose

interests are affected by the sale sought to be set aside. The learned vakil for the respondent argued that that expression should be construed as though it meant that the petitioner must have some interest in the property itself. It seems to me that such a contention cannot possibly be accepted and that such a construction would be wrong. When the legislature intended that the petitioner should have some interest in the property itself it has used very apt language such as either owning such property or holding an interest therein. Rule 90 comes immediately after Rule 89 and that difference in the terminology adopted between the two rules would almost seem to indicate that the different terminology was really deliberate and quite intended. The words being merely "whose interests are affected by the sale" all that we have to do is to put to ourselves the question whether by reason of the sale taking place or, in other words, by reason of the price fetched at the sale of the properties, the sale of which is sought to be set aside, the petitioner is a person that will be affected one way or the other. It is clear in this case that, if the price realised by the sale of Items Nos. 2 and 3 should be low, to the extent to which it is low the person that would be directly affected by it would be not any other party to the suit but the 4th defendant or his legal representative. I do not see why the words should not be construed according to their obvious meaning and why full effect should not be given to the words as they stand. The learned vakil for the respondent no doubt put the question whether a mere creditor of the judgment-debtor can be regarded as a person interested in the sale, and it may be there are difficulties in the way of regarding a mere creditor of the judgment-debtor as a person whose interest will be affected by the sale. But the mere fact that a person is a creditor of a judgment-debtor is not sufficient to show that he would be affected by any sale of the property of the judgment-debtor. It depends upon circumstances. It depends upon the solvency of the judgment-debtor. It may depend upon various other matters. But the expression used by the legislature being "interested" it must be taken to mean directly or immediately interested and even so construed it is clear that the 4th defendant's legal representative is a person that is directly interested and even immediately interested in the price realised by the sale and therefore a person directly and immediately affected by the sale. The learned vakil for the respondent has drawn my attention to the case of Kathiresan Chettiar Vs.

Ramasami Chettiar and Others, where Sadasiva Aiyar and Napier, JJ., held that a mere decree-holder of the judgment-debtor could not be

regarded as a person affected by the sale of the property within the meaning of Rule 90. The decree-holder in that case had not even attached the

property sought to be sold. At page 304, the learned Judges say as follows:

We agree that it is a necessary limitation of the word ""interests"", to confine it to the property concerned as any other construction would open up

an enquiry as to whether the appellant's pecuniary interests required satisfaction out of the property sold or whether there was other property

available to him.

2. But the word "interest" does not appear in this rule and the plain words of the rule are merely "affected by the sale". In any case the observation

of the learned Judges was not necessary for the decision of the case before them. Mr. Krishnamachari for the petitioner has cited the case of

Dhirendra Nath Roy v. Kamini Kumar Pal ILR (1924) C 495. The learned Judges in that case held that the expression ""persons whose interests

are affected by the sale" : is one which is not limited to the persons whose proprietary or possessory title is affected by the sale. The learned

Judges held that a creditor attaching the property of the judgment-debtor has such interest as would entitle him to apply under Rule 90 of Order

21. It has frequently been held that mere attachment of property does not create any interest in the property and therefore it follows that the

expression "affected by the sale" should not be construed as if the words were "having an interest in the property". I am clearly of the opinion that

the order of the Lower Court was wrong and I therefore set it aside and as the petition has been dismissed on a mere preliminary ground I send it

back for being heard and disposed of according to law. The respondent will pay the petitioner's costs of this application.