

(1940) 04 MAD CK 0021
In the Madras High Court

Nukala Surya Rao

APPELLANT

Vs

Yedida Bullemma alias Venkayya and Another

RESPONDENT

Date of Decision : 12-04-1940

Acts Referred:

Madras Debt Conciliation Act, 1936 — Section 25

Citation : AIR 1940 Mad 899 : (1940) 52 LW 367 : (1940) 2 MLJ 333

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—This petition canvasses the correctness of a decision to the effect that when there has been a decree on a mortgage-debt

and the hypotheca has been sold and an application is, filed under Order 21, Rule 90 by the judgment-debtor to set aside the sale on the ground of

material irregularity, etc., that proceeding is not a proceeding in respect of a debt within the purview of Section 25 of the Madras Debt Conciliation

Act (XI of 1936.) Section 25 runs as follows:

When an application has been made to a Board u/s 4 any suit or other proceedings then pending before a Civil Court in respect of any debt for the

settlement of which application has been made shall not be proceeded with until the Board has dismissed the application.

2. The decree in this case was passed in a suit of 1934. The petition under Order 21, Rule 90 was E.A. No. 756 of 1937 and it was actually

pending when the petitioner applied under E.A. No. 776 of 1939 for a stay of the earlier application on the ground that he had on 31st August,

1939, filed an application before the Debt Conciliation Board for the settlement of all his outstanding debts including the debt embodied in the

decree. The learned District Munsif holds that a proceeding under Order 21, Rule 90 is not a proceeding in respect of a debt and dismisses the

petition. He gives no reasons in support of his conclusion.

3. When a sale has been held in execution of a decree for the payment of a debt, the decree is not satisfied until the sale is confirmed and the

decree-holder is permitted to draw out of Court the money in deposit. When there is an application pending under Order 21, Rule 90, the Court

has no power to confirm the sale till that application has been decided (vide Rule 92). So long as the purchase price remains in Court deposit and

the sale is unconfirmed, the decree is not satisfied and the essential nature of the enquiry under Rule 90 is an adjudication of the question whether

the sale held is valid and whether the money in deposit can be withdrawn by the decree-holder in satisfaction of his decree. That is to say, the

effect of proceedings under Order 21, Rule 90 is to decide whether a particular property has been validly sold in discharge of the decree debt and

whether the purchase price deposited as a result of that sale shall go in liquidation of this debt. It seems to me that such proceedings must come

within the very wide terms of the phrase "proceedings in respect of a debt" used in Section 25 of the Madras Act XI of 1936.

4. I therefore allow the revision petition and direct the trial Court to restore the application to file and dispose of it according to law. The petitioner

will be entitled to his costs in revision.