

(1892) 04 MAD CK 0007
In the Madras High Court

Paluvindeagath Ammothi Haji		APPELLANT
	Vs	
Pudiamadathumel Kunhayen Kutti		RESPONDENT

Date of Decision : 12-04-1892

Acts Referred:

Citation : (1892) 2 MLJ 231

Hon'ble Judges : Muthusami Aiyar, J; Best, J

Bench : Full Bench

Judgement

Muthusami Aiyar, J.—The question for decision in this appeal is whether an otti-holder in Malabar loses his right of pre-emption in

consequence of his refusal to bid at a court-sale on the invitation of the purchaser at such sale. The contention for the appellant is that he abstained

from bidding because he was under the apprehension that the junior members of the judgment-debtor's tarwad might contest the validity of the

court-sale on behalf of their tarwad. The decision, must, I think, depend on the further question how far an invitation to bid at a court-sale is

equivalent to an offer to sell from the jenmi or the real owner. There is no reason to doubt that if the decree is binding on the tarwad, the otti-holder

is bound to elect either to bid at the court-sale or to relinquish his right of pre-emption. In the present case, the decree was one against the

karnavan and the senior Anandravan of the tarwad and as such it was prima facie binding on the tarwad, and no valid ground of objection is shown

by the appellant to have existed to the validity of the sale in its execution as against the tarwad. It is then said that appellant abstained from bidding

because he feared that some members of the judgment-debtor's tarwad might contend that the decree was not binding on it. The decree-holder

had a right to bring the property to sale and the otti-holder had a right of pre-emption. All that the former was bound to do, was to give the latter

an opportunity to elect either to exercise his right or not, and if the latter did not choose to do so, he must be taken to have relinquished his right.

The facts found do not indicate that he made any enquiry or had a reasonable objection to the decree being treated as binding on the tarwad. The

case is one of election and the court-sale created a necessity for appellant's electing either to buy or not to buy and after once electing not to buy,

he cannot again be permitted to change his mind and assert his right of pre-emption. I am of opinion this second appeal must fail and be dismissed

with costs.

Best, J.

2. The question is whether the lower courts are wrong in holding that plaintiff has forfeited the right of pre-emption which he possessed as ottidar

of the property which was purchased by the respondent on its being sold by court in execution of a decree for money obtained by a third party

against the jenmi.

3. The findings of the lower courts are (1) that notice was sent by the decree-holder to the appellant of the date of the sale, calling upon him to

exercise his right of pre-emption if so minded, and (2) that appellant was himself present at the sale; but would not bid, saying that the otti to

himself was given by nine persons of the tarwad, whereas the decree under which the sale was being held was against two only, and that he was

afraid there might be a suit by the others to set aside the sale.

4. It was no doubt held in *Cheria Krishnan v. Vishnu I. L. R. 5 M. 198*, that the mere fact that public notice was given of the intended sale--at

which therefore the ottidar might have come and bid--was not sufficient to deprive him of his right of pre-emption. That does not appear, however,

to be a case in point; for here there was something more than the public notice. There was special notice sent to the ottidar himself; and it is found

as a fact that he was present at the sale and declined to bid for fear his doing so might involve him in litigation.

5. It appears that the validity of the sale was in fact disputed, but without success; and it is only after this that appellant comes into court offering to

purchase the property in the exercise of his right of pre-emption.

6. It was held by the Calcutta High Court in Abdul Jabel v. Khelatchandra Ghose 1 B. L. R 105 that when property is sold by public auction at a

sale in execution of a decree and the person having a right of pre-emption has the same opportunity to bid for the property as other parties present

in court, the law of pre-emption does not apply. This is certainly not quite in accordance with the dictum in Cheria Krishnan v. Vishnu (referred to

above) that a pre-emptor is ""entitled to be fully informed what price he is to pay before he makes up his mind to pay,"" and ""should not be driven to

give any fancy auction price at an auction."" But even taking this dictum to be authority for holding that appellant did not forfeit his right of pre-

emption by not bidding at the auction,--as soon as the auction sale ended, the price for which the property had been knocked down was a ""sum

ascertained ""for which he could have offered to take the property, instead of waiting for nearly a year without even making the offer.

7. No doubt the Limitation Act gives a period of one year for the purpose of instituting a suit to enforce a right of pre-emption; but the question

before us is not whether the suit is in time, but whether by his conduct the appellant waived his right. Both the lower courts have found that he did;

and I agree with them.

8. I therefore agree in dismissing this second appeal with costs.