
(1921) 10 MAD CK 0001
In the Madras High Court

Ramasami Konan

APPELLANT

Vs

Kulandai Velu Pillai

RESPONDENT

Date of Decision : 25-10-1921

Acts Referred:

Citation : AIR 1922 Mad 63 : 70 Ind. Cas. 569 : (1922) 15 LW 272

Hon'ble Judges : William Ayling, O.C.J.; Odgers, J

Bench : Division Bench

Judgement

1. Appellant attacks the order of the Subordinate Judge on two grounds,-

(1) that the respondent having himself caused the property to be brought to sale as that of the judgment-debtor is estopped from now claiming it

from the auction-purchaser as his own;

(2) that the sale has become absolute under Order XXI, Rule 92 of the Code of Civil Procedure.

2. As regards the first argument, we must hold that the fact that respondent himself was under a mistake when he filed his sale application will not

prevent an estoppel; Sarat Chunder Dey v. Gopal Chunder Laha 20 C. 296 and unless it is found that appellant was not in fact misled, respondent

must be held to be estopped. It is unnecessary to call for a finding as to this, however, because appellant is entitled to succeed on the second point.

The sale was duly confirmed by order of the Court and became absolute under Order XXI, Rule 92. After that it could only be questioned by a

person other than the judgment-debtor applying under Rule 100. Respondent did in fact apply under this section though whether he was entitled to

do so, seeing he was himself the decree-holder, may be doubted. However, he did and his application was dismissed under Rule 101. After this

his only remedy was by suit (vide Rule 103) and his application u/s 47 was incompetent.

3. We see no reason, in the circumstances, of this case to convert this proceeding into a suit.

4. We set aside the lower Court's order and dismiss the petition with costs throughout.