

(1921) 12 MAD CK 0016
In the Madras High Court

Rayapati Venkatasubba Rao

APPELLANT

Vs

Kalapatapc Narayana Rao and Another

RESPONDENT

Date of Decision : 22-12-1921

Acts Referred:

Citation : AIR 1922 Mad 83(1) : 66 Ind. Cas. 44 : (1922) 15 LW 450

Hon'ble Judges : Krishnan, J

Bench : Single Bench

Judgement

Krishnan, J.—In this case the learned Subordinate Judge has set aside a sale under Order XXI, Rule 89 of the CPC though no application

for it had been made by the judgment debtor to the Court in time. The money, no doubt, had been paid into Court in time but no application was

made as required by Rule 89, Civil Procedure Code. There was only a lodgment schedule filed into Court along with the money as required by

Rule 131 of the Civil Rules of Practice whenever any money is paid into Court. The learned Subordinate Judge has held that this lodgment

schedule can be treated as equivalent to the application required by Rule 89. I regret I am unable to accept this view. There is no prayer in the

lodgment schedule to set aside the sale under Rule 89 and I do not see how, without such a prayer, it can be treated as an application under the

rule.

2. It was suggested that an oral application should be presumed to have been made to the Court under the circumstances in this case and reliance

is placed on the judgment of Tyabji, J., in Mariappa Annam v. Hari Hara Iyer (1) and on the case Vannisami Thevar v. Perintyaswami Thevar (2)

where the former case is cited and its effect stated. I confess that I do not

understand what is meant by presuming an oral application. If it is a presumption of fact, it is rebutted* in this case, as it is found by the (District) Munsif that no oral application had been made and the Subordinate Judge has not set aside that finding. If the presumption is one of law, I do not know of any justification for such a presumption. The finding here being that no application was made in time in the present case either oral or in writing, one necessary condition for action under rule (sic)c9 fails and the order of the Subordinate Judge setting aside the same must itself be set aside. The order of the District Munsif is restored with costs here and in the Court below.