(1893) 09 MAD CK 0025

In the Madras High Court

Sundara Gopalan APPELLANT

Vs

Venkatavarada Aiyangar and Another RESPONDENT

Date of Decision : 25-09-1893

Acts Referred:

Citation : (1894) ILR (Mad) 228

Hon'ble Judges : Muthusami Aiyar, J

Bench : Division Bench

Judgement

Muthusami Aiyar, J.—The petitioner is the judgment-creditor in Original Suit No. 25 of 1881 on the file of the Subordinate Court (West) at

Madura and the counter-petitioner is the purchaser at the court sale held in execution of the decree passed therein against one B. Krishnasami

Chetti. The auction-sale was held on the 27th July 1885 and it was since found that a portion of the property sold valued at Rs. 60 belonged to

one Velayudam at the date of the sale. The counter-petitioner thereupon claimed a refund of the purchase-money, and the Subordinate Judge

decreed the claim on the small cause side. It is contended for the petitioner that as Krishnasami Chetti had some saleable interest in the property

sold, the counter-petitioner is entitled to no refund at all. It is true that in Kunhamed v. Chathu, I. L. R 9 M 439 it was held that where the

judgment-debtor had some saleable interest in the property sold the court had no jurisdiction to make an order u/s 315 for refund of the purchase-

money or any part thereof. But the question that now arises for determination is whether the purchaser may in a regular suit, claim a refund in

proportion to the extent to which the judgment-debtor had no interest in the property sold. With reference to a sheriff''s sale the Privy Council held in Dorab Ally Khan v. Abdool Azeez and Anr. L. R 5 I. A 126 that in India the vendor''s liability to refund the purchase-money in respect of a

private sale is governed by the English law relating to the sale of chattels and that law as laid down in Eichholz v. Bannister, 34 L. J (C. B.) 105 is

that there is an implied warranty on the part of the seller that he is the owner of the goods. This is in accordance with the law as laid down in

Section 55, Sub-section 2 of Act IV of 1882. But in the case before me, the sale was not a sale by private contract but a sale in ""invitum"" and

under legal process and it must, therefore, be governed by rules applicable to execution sales. The effect of a court sale, as stated in Section 316,

Civil Procedure Code, is that ""so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold

vests in the purchaser"" &c. The court sale then is a sale of the judgment-debtor''s interest such as it was at the date of the sale according to Section

316. By Section 313, however, the purchaser is enabled to apply to the court to set aside the sale on the ground that the person whose property

purported to be sold had no saleable interest therein and the court is authorized to make such order as it thinks fit. By Section 315 it is provided

that when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that

reason deprived of it, the purchaser shall be entitled to receive back his purchase-money (with or without interest) from any person to whom the

purchase-money has been paid. The result of the above-mentioned sections is that what passes to the purchaser at a court sale is the right, title and

interest of the judgment-debtor subject, however, to this condition, viz., that the purchaser may recover back his purchase-money when he finds

that the judgment-debtor had no saleable interest at all. The English rule as stated by Lord St. Leonards is that if a conveyance of real property is

actually executed by all the necessary parties and the purchaser is evicted by a title to which the covenants do not extend, he cannot recover back

the purchase-money either at law or in equity and referring to that rule as governing all sales by private contract, the Privy Council point out in the

case cited above that it is not applicable to a sheriff''s sale under a fieri facias in which the sale, as regards the owner of the thing sold, is in invitum

and made under color of legal process. They say that a purchaser at a sheriff''s sale has at best very inadequate means of investigating the title of the judgment-debtor, all that is sold and bought is the right, title and interest of the judgment-debtor with all its defects and the sheriff who sells and

executes the bill of sale if ever called upon, would refuse to execute any covenant of title. They observe then ""it is perfectly clear that when the

property has been sold under a regular execution and the purchaser is evicted afterwards under a title paramount to that of the judgment-debtor,

he has no remedy either against the sheriff or the judgment-debtor."" Such being the law of England applicable to sheriff''s sale under a fieri facias,

the question is whether it is not applicable in India by reason of the fact that there is an implied warranty of title in India as is the case in the sale of

chattels in England. The decision of the Privy Council seems to me to be an authority for the proposition that the implied warranty of title in respect

of sales by private contract cannot be extended to court sales except so far as such extension is justified by the procesual law in India.

2. I do not desire to be understood as suggesting that in case of fraud there could be no remedy; but this is not that case. What I hold is that where

the court sale is not vitiated by fraud, the only extent to which the purchaser can claim relief is that indicated by Section 315, which recognizes the

equity on which Hitchcock v. Giddings, 4 Price, 135 was decided, viz., that the sale may be rescinded on the ground of mistake where there was

no saleable interest at all even after a conveyance has been executed.

3. It follows therefore that the judgment-creditor cannot be treated as if he was the vendor and the court sale cannot be treated as if there was an

implied warranty of title as in a private sale except so far as is warranted by the language of Section 315. The decree of the Subordinate Judge is

set aside and the suit is dismissed with costs throughout.

