(1893) 09 MAD CK 0033

In the Madras High Court

Sundara Gopalan APPELLANT

Vs

Venkatavarada Ayyangar and Another RESPONDENT

Date of Decision : 25-09-1893

Acts Referred:

Citation : (1894) ILR (Mad) 228

Hon'ble Judges : Muttusami Ayyar, J

Bench : Single Bench

Judgement

Muttusami Ayyar, 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 Chetty. 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 Chetty had some saleable interest in the property sold, the counter-petitioner is entitled to no refund at all.

It is true that in Runhamed v. Chathu I. L. R. 9 Mad. 437 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 L. R. 5 I. A. 116 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 it must, therefore, be governed by rules applicable to execution sales. The effect of a Court-sale, as stated in Section 316, Code of Civil Procedure,

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,"" etc. 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 313,1 however, the

purchaser is enabled to apply to the Court to set aside the sale on the ground chat the person whose property purported to be sold had no saleable interest

therein, and the Court is authorised to make such order as it thinks fit. By Section 315 it is provided that when it was 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 invitwn, and made under colour of legal process, They say that a purchaser at a Sheriff''s sale has at least 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 is never called upon, and, if 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 sales 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 processual law in India.

2. I do not desire to be understood as suggesting that in case of fraud there would 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 whether 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.

1[Section 313 :--The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the

person whose property purported to Application to set aside be sold had no saleable interest therein, and

the Court may sale on ground of judgment- make such order as it thinks fit: provided that no order to set debtor

having no saleable aside a sale shall be made, unless the judgment-debtor and the interest. decree-holder have

had opportunity of being heard against such order.]

