

(1888) 06 PRI CK 0005

In the Privy Council

T. R. Arunachellam Chetti

APPELLANT

Vs

V. R. R. M. A. R. Arunachellam Chetti and another by Their
Guardians

RESPONDENT

Date of Decision : 27-06-1888

Acts Referred:

Citation : (1888) 15 IndApp 171

Hon'ble Judges : Barnes Peacock, Macnaghten, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. This is an appeal against two orders and one judgment of the High Court of Madras, which reversed the proceedings of the Subordinate Court of Madura in execution of a decree in a suit which had been brought in that Court. The Respondents were Defendants in the suit, and in execution of the decree which had been obtained against them, a village called Kattcmoor was sold by the order of the Court, and was purchased by the Appellant. The High Court, by their judgment, which is now appealed against, set aside the sale, and the grounds upon which they did so are stated by them to be that : "It is clear that the description of the properties advertised for sale was most imperfect. The judgment debtors enjoyed not only proprietary rights in some portion of the property, but rights as mortgagees of very considerable value in other portions of the property; and there was nothing to indicate the possession by the judgment debtors of any rights as mortgagees in the villages. The purpose of the law would be entirely defeated if a more complete description were not enforced than was given in this case."... "It cannot be doubted that the inadequate description led to sale of property valued at upwards of Rs. 40,000, together with mortgage claim for Rs. 40,000, for Rs. 20,000." Then they say they must set aside the order confirming the sale and also another order made upon another petition, by which an application to set aside the sale was refused. 2. It is true, as stated by the High Court, that the judgment-debtors had proprietary rights in a part of the property, and were only mortgagees of the other part. The decree was obtained in January, 1880, and an application was made to the Court for the execution of it, and attachment was made of the village, which contained fifteen hamlets;

there was the usual proclamation of the sale and notification that it was to be on the 22nd of July, 1882, -and the usual warrant, and apparently the judgment-debtors knew perfectly well that the whole of the village was going to be sold. They state in an application which they made that "the Kattanoor village of these Plaintiffs has been attached on account of the said debt, and the sale is fixed by this Court for the 22nd instant." Notwithstanding this, the first complaint which was made by them was, on the 29th of July, 1882, and in their petition they complained that the village had several hamlets attached to it, and if one of them alone had been sold it would have been sufficient. They also complained that one moiety of the villages belonged to them by right of mortgage, and the other they had their property in, raising for the first time the objection upon which the High Court has founded its judgment. The sale was completed, and they then petitioned the High Court on the 9th of September, 1882. In this petition they state that the villages ought to have been sold each by itself and not all in one lot, and that the villages being separately numbered for the attachment there was no necessity for a representation that they should be separately sold. 3. Upon that petition an order appears to have been made by the Chief Justice in which he says : "I see no irregularity. The judgment debtor might have applied that the sale should be made in lots." There is a distinct opinion of the Chief Justice that the judgment debtors might, if they had considered the sale of the villages in one lot would have been unfair, have made an application to have them sold in lots, which they did not do. However, notwithstanding the Chief Justice's opinion that there was not any irregularity he admitted the appeal, and the High Court, when the appeal came before them, made this order. "We require the Court below to ascertain and report what is the interest enjoyed by the family in the villages, whether it intended to sell the mortgage and other rights; whether the Appellants in that Court made any complaint of the insufficiency of description in the proclamation of sale, and whether any injury has occurred to the Appellants from any such insufficiency." It would appear from what the High Court then directed to be ascertained and reported that they were satisfied with the opinion which had been expressed by the Chief Justice that there was no ground for saying that the sale ought to be set aside because it had not been sold in lots. 4. A report was made by the Subordinate Judge, and it is this : "There are four points sent down for report: (1.) The interest enjoyed by the family in the villages is as stated in the judgment of their Lordships. (2.) The sale proclamation says that the right, title, and interest will be sold, and this must include the mortgage and other rights, but they were not specified. (3.) No complaint was made of the insufficiency of description in the proclamation of sale. Two petitions are relied on by the Petitioners, one dated the 29th of July, 1882, and the other dated the 7th of August, 1882. The first petition is said to be before the High Court. The second petition makes no such complaint. (4.) As I find that no such complaint was made I thought that any evidence as to any injury resulting from such insufficiency was unnecessary." 5. Therefore, as far as regards the objection that, the description was insufficient, which is relied upon, as their Lordships understand, as vitiating the sale - for that appeared to be the

contention of the counsel for the Respondents - the objection was not taken until the sale had been completed. The judgment debtors knowing, as they must have known, what the description was in the proclamation, allow the whole matter to proceed until the sale is completed, and then ask to have it set aside on account of this, as they say, misdescription. It appears to come within what was laid down by this Board in *Olpherts v. Mahahir Pershad Singh* Law Rep. 10 Ind. Ap. 25, that if there was really a ground of complaint, and if the judgment debtors would have been injured by these proceedings in attaching and selling the whole of the property whilst the interest was such as it was, they ought to have come and complained. It would be very difficult indeed to conduct proceedings in execution of decrees by attachment and sale of property if the judgment debtor could lie by and afterwards take advantage of any misdescription of the property attached, and about to be sold, which he knew well, but of which the execution creditor or decree holder might be perfectly ignorant - that they should take no notice of that, allow the sale to proceed, and then come forward and say the whole proceedings were vitiated. That, in their Lordships' opinion, cannot be allowed, and on that ground the High Court ought not to have given effect to this objection. 6. There is another objection to this decree of the High Court. The law provides, by Section 311 of Act XIV. of 1882, that an objection may be taken by the judgment debtor to an irregularity in the sale, but then it says that no sale shall be set aside on the ground of irregularity unless the Applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity. The Subordinate Judge finding, as he says, that no complaint had been made of this irregularity, did not receive evidence that there was any injury occasioned by it. If he was wrong in the opinion of the High Court in doing that, they ought to have sent back the case to him to take that evidence. Instead of doing this when the case comes before them, and they give judgment, they assume that there was a substantial injury, and that the property, in consequence of the mis-description, had sold for less value than it would otherwise have fetched. There seems to be no ground for an assumption of that kind by the High Court, and, therefore, both as to the objection to the non-description, or not mentioning the mortgage in the attachment proceedings, and that there was no proof that any special injury was occasioned, their Lordships think that the judgment of the High Court was wrong, and that it must be reversed. 7. Their Lordships will, therefore, humbly advise Her Majesty that the orders of the High Court should be reversed, the appeals to the High Court dismissed with costs, the orders of the Subordinate Court which were appealed against affirmed, and the costs in the Subordinate Court ordered to be paid by the Respondents. The Respondents will pay the costs of this appeal.