
(1916) 08 MAD CK 0012
In the Madras High Court

Tanguturi Jagannadham Alias Hanumantha Rao	APPELLANT
Vs	
K. Seshagiri Rao and Others	RESPONDENT

Date of Decision : 30-08-1916

Acts Referred:

Citation : 37 Ind. Cas. 387

Hon'ble Judges : Sadasiva Aiyar, J; Napier, J

Bench : Division Bench

Judgement

1. This Civil Miscellaneous Petition No. 708 of 1916 is an application to review our judgment in Second Appeal No. 92 of 1914, as it proceeded

on the basis that the suit to set aside, among other things, the Court auction-sale of item No. 13 (at which the 15th defendant became the

purchaser of that item) was brought more than a year after that sale and was, therefore, barred by Article 12 of the Limitation Act. It is not now

disputed that we were in error in having entertained the opinion that the suit was: brought after an interval of more than one year from the date of

the confirmation of the sale of item No. 13.

2. It is, however, argued for 15th defendant's legal representatives (the appellants) that the sale should not be set aside as the 15th defendant was

a bona fide purchaser at the Court auction without notice of the irregularities relied on by the plaintiff. A third party who is the bona fide purchaser

at a Court auction-sale is no doubt protected where the decree, in execution of which the sale was held, was passed by a Court having jurisdiction,

though the decree was vitiated by illegality or was afterwards set aside. But irregularity in the conduct of the sale itself which vitiated it could be

urged against the Court auction-purchaser also in proper proceedings by way

either of application or of suit taken within the period fixed by law

and the observations in *Zain-ul Abdin Khan v. Muhammad Asghar Ali Khan* 10 A.P 166, *Krishna Chandra Mandal v. Jagendra Narain Roy* 27

Ind. Cas. 139, and *Malkarjun v. Narahari* 2 Bom. L.R. 927 : 27 I.A. 216 relied on by the appellants' learned Vakil [See also *Satis Chandra*

Ghose v. Rameswari Dasi 31 Ind. Cas. 894 have no bearing on the question before us. The question for decision in those cases was whether sales

in execution held under decrees afterwards reversed were valid. We think that we are bound by the Privy Council decisions in *Malkarjun v.*

Narhari 25 B.S 337. and *Raghunath Das v. Sundar Das Khetri* 24 Ind. Cas. 304 : 27 M. L.J. 150(1914) M. W. N. 147, to hold that a Court

auction-sale held without notice to the judgment-debtor whose interests were to be directly affected by the sale (as in the present case), without

notice to a major judgment-debtor who was wrongly treated as a minor, is vitiated by such a grave and material irregularity that the judgment-

debtor is entitled to bring a suit to set aside the sale on that sole ground, unless the defendant pleads facts which raise valid defences to the claim of

the plaintiff which if, prima facie, a sustainable claim. One of such defences is indicated by the decision in *Ramachari v. Duraisami Pillai* 21 M.K

167, namely, that the plaintiff, knowing of the proceedings before the sale actually took place, allowed another judgment-debtor to represent him in

the execution proceedings, wilfully kept in the background and allowed the sale to proceed, when he could have stopped it by pointing out the

irregularity to the Court at once.

3. If the decision in *Famachari v. Durai-sami Fillai* 21 M.K 167. intended to lay down that the plaintiff in such a suit ought to allege in the plaint not

only that no notice was served on him through Court as required by law but that even otherwise he had no notice of the sale proceedings, we

respectfully dissent from such a view. But we are not at all clear that the learned Judges intended to go so far as to lay down such a proposition.

4. The observations of the Privy Council found at Page 348 of the decision in *Malkarjun V. Narhari* 5 C.W.N. 10., which was decided later than the

case of *Ramachari v. Duraisami Filial* 7 Ind Dec. 475, seem to imply clearly that it was for the Court-purchaser to set up any appropriate defences

when the plaintiff has made the only necessary allegation in his plaint, namely,

that no notice through Court as required by law was issued to and served on him.

5. We are finally asked to send down for finding an issue as to whether the plaintiff had notice of the sale proceedings otherwise than through

Court and whether he is estopped by his conduct from relying on the material irregularity in the sale proceedings.

6. We think that the 15th defendant not having raised that defence in his written statement, it would be inadvisable to allow him to raise it at this late stage and we, therefore, refuse it to be so raised.

7. In the result the Second Appeal No. 92 of 1914 is dismissed with the plaintiffs costs incurred by him in this Court, including the costs of the

Review Petition, Civil Miscellaneous Petition No. 708 of 1916.