

(1941) 10 MAD CK 0007
In the Madras High Court

T.K. Embaru

APPELLANT

Vs

Vedavalli Ammal

RESPONDENT

Date of Decision : 15-10-1941

Acts Referred:

Citation : AIR 1942 Mad 595 : (1942) 2 MLJ 148

Hon'ble Judges : Krishnaswami Ayyangar, J

Bench : Division Bench

Judgement

Krishnaswami Ayyangar, J.—A preliminary objection is taken to the maintainability of this appeal which is one against an order of the

Master granting to the decree-holder leave to bid at the auction sale of the mortgaged property directed by the decree. On the date of the order

there was a sum of over Rs. 16,000 due to the respondent who is the decree-holder. The order of the Master permitted him to bid for the

property for the market value which is stated in the proclamation to be Rs. 13,000 an amount much less than the amount due to the decree-holder

under the decree.

2. The right of appeal from an order or decision of the Master is granted or recognised in Order XIII, Rule 19 of the Original Side Rules. It says:

Any person affected by any order or decision of the Master or the First Assistant Registrar, Original Side, in respect of all matters judicially dealt

with in the exercise of the powers delegated to him by the Honourable the Chief Justice from time to time under Order 40, Rule 2 of these rules

may appeal therefrom to a Judge.

The ground on which the preliminary objection is founded is that, in giving leave to bid, the Master was not exercising a judicial, but merely an

administrative or ministerial function and this rule does not permit an appeal from such an order." The question whether, in giving or refusing leave

to bid, the Court exercises a judicial or an administrative function was considered by a Bench of this Court in *Ulaganatha v. Molaveedu Alagappa*

(1929) 122 I.C. 161 (M.) and it was held that an order giving or refusing leave to bid is a ministerial order and not a judicial one. That decision

was given under Order XXI, Rule 72 of the Civil Procedure Code, and it merely followed a ruling of the Privy Council in *Ko Tha Hnyin v. Ma*

Hnin, J L.R. 38 IndAp 126 : ILR 38 Cal. 717 (P.C.) Although the present case arises not under the Civil Procedure Code, but under the Original

Side Rules, it seems to me that I am bound to follow the rulings mentioned above, which determine the character of the order when the Court gives

or refuses leave to bid.

3. Order XVIII, Rule 8 of the Original Side Rules relates to applications for leave to bid and it says that "an application for leave to bid at the sale

may be made by Master's Summons in Chambers, supported by affidavit setting forth any facts showing that an advantageous sale cannot

otherwise be had..." This rule is general with regard to sales of property under orders of Court. Order XXIX relates to the procedure in regard to

suits on mortgages and charges. Rule 6 of this order says:

A sale of mortgaged property shall be conducted in manner prescribed by Order 18 of these Rules. Provided that, if leave to bid is granted to the

plaintiff or applicant, and, unless the Court otherwise orders, the sum allowed to be bid shall be not less than the whole amount then, due for

principal, interest and costs; and in the event of the property being sold in lots, not less than the market value of each lot in respect of which the bid

is made.

4. The general rule is that leave to bid is not to be granted unless the decree-holder is prepared to bid for not less than the amount due to him for

principal, interest and costs, and that that course should be followed unless the Court otherwise orders. In the present case the Court (which term

includes a Master) has made an order departing from the ordinary practice, which it is of course entitled to do. The question for consideration is

whether when the Court "otherwise orders", the Court acts judicially or in an administrative capacity. I quite agree that, before the Court,

"otherwise orders", it has to take into account the facts and circumstances of the case. But I am not satisfied that, when a Court in granting or

refusing leave to bid is acting in a ministerial capacity the mere fact that certain considerations have to be taken into account before making its

order, is a good reason for holding that the order for that reason becomes a judicial one. Even when a Court acts in a ministerial capacity it does

not mean that the Court is entitled to act arbitrarily. The question as to the nature of an order is not to be determined by the nature of the

considerations which weigh with the Court or the fact that the Court is called upon to exercise a discretion before it makes the order.

5. I am of opinion that the Master in the present case acted in a ministerial capacity and his order therefore is not liable to be appealed against. The

preliminary objection succeeds and the appeal is dismissed with costs.