

(1919) 04 MAD CK 0002
In the Madras High Court

T.S. Manika Gramanai

APPELLANT

Vs

E.K. Parsuram Mudeley and Others

RESPONDENT

Date of Decision : 28-04-1919

Acts Referred:

Citation : 59 Ind. Cas. 894

Hon'ble Judges : Napier, J;Abdur Rahim, J

Bench : Division Bench

Judgement

Napeir, J.—Appeal against Order No. 255 of 1919 is an appeal against the order passed in the District Court of Chingleput on a petition

under Order XXI, Rule 98, Civil Procedure Code. There is no dispute about the facts. The petitioner was the purchaser at a sale in a mortgage

suit.

2. The 4th respondent purchased the property under a money decree in a suit filed after the decree in the mortgage suit. The lower Court held that

the respondent was a person who came within the mischief of Rule 98 of Order XXI and was not protected by the language of Rule 99. He based

his decision on a certain ruling of this Court to the effect that a person in the position of the 4th respondent was really a representative of the

judgment-debtor and that, therefore, his rights should properly be adjudicated on in execution proceedings.

3. This was before the decision of the Full Bench in Veyindramuthu Pillai v. Maya Nadan 54 Ind. Cas. 209 : 43 M.K 107 : (1919) M.W.N. 881 :

26 M.L.T. 391 : 38 M.L.J. 32 which case came before my learned brother as Officiating Chief Justice and two other learned Judges. It was held

by the Full Bench in that case that, in circumstances exactly similar to these, the

proceedings were properly taken u/s 47 and that the auction-purchaser is a representative of the judgment-debtor. It is now argued before us that, although the Full Bench have held that he is a representative, the Full Bench had not before them for decision the construction of the language of Rules 98 and 99 of Order XXI, Civil Procedure Code. That is so. But if we must hold that Rules 98 and 99 do not apply to persons in this position, the result would be to make the decision of the Full Bench entirely infructuous. We must, therefore, see if it is not possible to give such a meaning to the language in Rules 98 and 99 as will reconcile them with the rights arising out of Section 47. It seems to me that this can be done by the application of Section 146 of the Code. That section says that, save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him." There cannot be the slightest doubt that words "claiming under him" are wide enough to cover the position of this auction purchaser. The decision of the Full Bench and the ruling of their Lordships of the Privy Council as far back as *Prosunno Kumar Sanyal v. Kali Das Sanyal* 19 C.P 683 : 19 I.A. 166 : 6 Sar. P.C.J. 209 : 9 Ind. Dec. (N.S.) 898 are sufficient to establish this proposition. If, therefore, we read these words "claiming under him" with the operative Rules 98 and 99 we get a perfectly clear position, namely, that when the judgment-debtor or other person claiming under him or a person acting at his instigation causes obstruction, he may be removed and, conversely, where the Court is satisfied that the resistance or obstruction was occasioned by any person other than the judgment-debtor or any person claiming under him in good faith to be in possession on his own account that if, a stranger who based his title on a title entirely outside the proceedings, he cannot be removed. This is, I think, the correct view. I would, therefore, dismiss this appeal with costs.

4. Civil Revision Petition No. 566 of 1919 is dismissed with costs.

Abdur Rahim, J.

5. I agree.