
(1911) 10 MAD CK 0020
In the Madras High Court

T.V. Veera Raghavan Pattar

APPELLANT

Vs

Vatasseri Para Mannadissier and Others

RESPONDENT

Date of Decision : 04-10-1911

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 73

Citation : 17 Ind. Cas. 920 : (1912) 23 MLJ 585

Hon'ble Judges : Spencer, J

Bench : Division Bench

Judgement

Spencer, J.—A sale of Immovable property having been held in execution of a decree and other decree-holders having come in u/s 73

C.P.C. for a rateable distribution of the assets, a prior mortgagee applied under Order 21 Rule 89 to have the sale set aside on his depositing 5

per cent of the purchase money and the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered. The

District Munsif dismissed the application holding that the latter amount included "" the amounts of all the decree holders" claimable rateable share,

an expression from which it is not clear whether he meant the whole of their decrees or only so much as they would have got on a rateable

distribution taking place. On appeal the District Judge reversed the Munsiff's order and set aside the sale. It is now contended that the District

Judge's order was wrong, as the deposit should have included the amounts of the decrees of the decree holders applying for rateable distribution. I

am unable to accede to this contention. It is true that it has been held that a judgment-creditor who has applied to participate in the assets of a sale

conducted on the attachment of another judgment-creditor although he may not have made any attachment of the property, is entitled to have the

sale proceeded with to satisfy his decree after the decree of the attaching creditor has been satisfied (*Mohunt Mag Lall Pooree v. Shib Pershad*

Madil ILR (1881) C. 34 and the sale may therefore be said to be for the benefit of decree-holders who have applied for execution other than the

attaching creditor, but this is far from imposing on the judgment-debtor or person otherwise interested an obligation not authorised by any section

of the Code. In *Lakshmi v. Kutthurani* ILR (1886) M. 57 on a consideration of the wording of Sections 2 and 295 of the Code of 1882 this Court

held that "decree-holder " in Section 311 included other decree-holders applying for rateable distribution so far as applications to set aside sales

on the " ground of irregularities " were concerned. The principle, that a sale in execution of a decree enures for the benefit of other decree-holders

who have applied for execution besides that decree-holder at whose instance the property is sold is recognised in *Kashi Nath Roy Chowdhury v.*

Surbanand Shaha ILR (1885) C. 317 and in *Bykant Natt Shaha v. Rajendra Narain Rai* ILR (1885) C. 333. It has to be noticed however that all

these rulings were antecedent to the insertion in the Code of Section 310 A under Act V of 1894 and they afford no clue to the interpretation of

the word " decree-holder" in that section. Coming now to Rule 89 Order 21 of Act V of 1908 which governs the present case, the language is

clear enough. The person who applies to set aside a sale under this section besides depositing 5 per cent of the purchase money "" for payment to

the purchaser must deposit for payment to the decree-holder the amount specified in the proclamation of sale as that for the recovery of which the

sale was ordered."" It would be doing violence to the English language to construe the words " the amount specified in the proclamation of sale" as

meaning and including the amounts due by the judgment-debtor to all other decree holders who have applied u/s 73 for execution of their decrees.

Again, when the succeeding rule dealing with the setting aside of sales for fraud or irregularity contains expressly the words " the decree-holder or

any person entitled to share in a rateable distribution of assets," there is no reason why the words " or any person entitled to share in a rateable

distribution of assets" should be read in after the word " decree-holder " in Rule 89 where they do not exist. On a consideration of the language of

Rule 89 of Order 21 of the present Code I am clearly of opinion that the appellant's contention is untenable and it will not help him that Rule 92

provides for previous notice being given to all persons likely to be affected by such an order and seems to contemplate that a court is not bound in

its discretion in every case to allow applications under Rule 89 or that the wording of the new Section 73 is a little different from that of the old

Section 295.

2. Under the old CPC the decisions in *Pita v. Chuni Lal* ILR (1906) B. 207 and *lioshan Lal v. Ram Lall Mullick* ILR (1903) C. 262 which follows

an earlier decision in *Hari Sundari Dasye v. Shashi Baba Dasye* (1896) 1. C.W.N. 195 are distinctly against him. This petition is dismissed with

costs.