

Bhavisetti Gopalakrishnayya Vs. Pakanati Pedda Sanjeeva Reddi and anr.

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Court : Chennai

Decided On : Nov-28-1919

Reported in : (1920)38MLJ228

Appellant : Bhavisetti Gopalakrishnayya

Respondent : Pakanati Pedda Sanjeeva Reddi and anr.

Judgement :

1. The only question to be decided is whether an auction-purchaser is a person "whose interests are affected by the sale" within the meaning of Order 21, Rule 90 of the present Code of Civil Procedure. These words did not occur in the Code of 1882 and the question is therefore one of first impression, so far as auction-purchasers are concerned. Under Order 21 Rule 91 an auction-purchaser may apply to the Court to set aside a sale on the ground that the judgment-debtor had no saleable interest, but these words do not go far enough to meet the case of auction-purchasers who have been misled by a statement inserted through error or fraud in the proclamation of sale to the effect that the property to be sold is unencumbered.

2. There can be no doubt that, if an application is made under Order 21, Rule 92 to set aside a sale, an auction-purchaser is entitled to notice of the application as being a person 'affected' thereby. In this respect, the practice of giving notice to auction-purchasers has received the approval of the Privy Council (See *Prosunno Kumar Sanyal v. Kali Das Sanyal* I.L.R. (1892) Gal. 683.

3. If an auction-purchaser's interests are affected by an order setting aside the sale, it is difficult to see why his interests are not also affected by the sale, although it is true that they are affected in a different sense and in a different degree. In one case, he stands to lose an interest acquired by the sale, in the other, he-acquires an interest which he did not possess previously. We have not been shown any reason for confining the word 'interests' in Rule 90 to the narrow meaning of interests in existence prior to the sale so as to exclude interests created by the sale.

4. In *Kala Mea v. Hasperink* (1908) I.L.R. 36 Cal 323 (P.C.) the Privy Council have laid stress upon the duty of Courts to see that in sales held under their direction, nothing is done to mislead purchasers into the belief that properties for which they bid are free from encumbrances, when, if the truth were known, it would appear that they were properties of little or no value on account of their being heavily encumbered. The present is a case in which the respondent was equitably entitled to have the sale set aside as being an unfair bargain into which he was induced to enter by misrepresentation and we think that the Courts below were right in their opinion that the words of the Code are wide enough to provide a remedy for such a case in execution.

5. We therefore confirm the order appealed against and dismiss the appeal with costs.

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