

**Alliar Rowther Vs. Narayana Kudumban and ors.**

**LegalCrystal Citation :** [legalcrystal.com/823526](http://legalcrystal.com/823526)

**Court :** Chennai

**Decided On :** Mar-07-1924

**Reported in :** AIR1924Mad817; 81Ind.Cas.844

**Judge :** Jackson, J.

**Appellant :** Alliar Rowther

**Respondent :** Narayana Kudumban and ors.

**Judgement :**

Jackson, J.

1. This is an application under Section 47, Civil Procedure Code to set aside a sale held in execution of a decree, on the ground that no notice had been served on the judgment-debtor, and the proceedings were fraudulent. Both the Mansif and the Subordinate Judge have dismissed the application; and hence this second appeal.

2. The District Munsif has found that the notices were duly served and there is no reason to hold that the sale was ob initio void. The case where an entirely wrong notice had been sent out, is not in point, cf. Raghunatha Das v. Sundar Das Khetri 24 Ind. Cas. 304 : 42 C.P 72 : 18 C.W.N. 1058 : 1 L.W. 567 : 27 M.L.J. 150 : 16 M.L.T. 353; (1914) M.W.N. 747 : 16 Bom. L.R. 814 : 20 C.L.J. 555 : 13 A.L.J. 154 : 41 I.A. 251. There is ample authority for holding that where the sale is sought to be set aside on the ground of fraud, Article 166 applies. See Konidena Karnayya v. Konidena Ramamma 74 Ind. Cas. 458; (1922) M.W.N. 176; A.I.R. (1922) (M.) 95 : 16 L.W. 934 Grace Ros.amv.nd Rhodes v. Padmanabha Chettiar 26 Ind. Cas. 369 : 1 L.W. 1033; (1914) M.W.N. 921 : 17 M.L.T. 18. The appeal is dismissed with costs.